COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2014

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

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PART 6

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COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2014

THURSDAY, APRIL 18, 2013.

DEPARTMENT OF JUSTICE BUDGET REQUEST

WITNESS

HON. ERIC HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES

OPENING STATEMENT—MR. WOLF

Mr. WOLF. The hearing will come to order. Attorney General Holder, welcome before the committee, and thank you for appearing.

I'm going to hold my questions until the very end because there are Members who have to catch planes and go out of town, but I'll have an opening statement that will cover a number of the questions and concerns that I have.

Let me address the bombing attack at the Boston Marathon on Monday. We know that the FBI and the Joint Terrorist Task Force, the ATF and its forensic specialists, and all the Federal, State, and local authorities are working nonstop to determine who carried out this barbaric act and to ensure that we have no other attacks. Let me assure you this committee, this subcommittee is ready to help in any way we can to help law enforcement catch the perpetrators and planners of this act of terror and ensure that the full force of justice is exerted.

My wife is from the Boston area. I actually ran in the Boston Marathon in the early 1970s. And to think of something like that taking place is—so anything this committee can do, we stand ready.

I want to express some disappointment with regard to you and me and this subcommittee. I'm extremely disappointed in the direction your office has taken, or in some cases has not taken, in important policy matters. I'm disappointed the Department has been slow to use the flexible authority the committee provided to start new pilot efforts to expand the Federal Prison Industries. The number of employed inmates has fallen from 23,000 in 2006 to a projected 12,800 in FY '14. This is an area where leadership is necessary, and we have made it very clear that I want to support you in this effort, but we need to see that you are taking it seriously and going after it in an energetic way, and we have not seen that.

Your Bureau of Prisons has started procuring its hats from FPI. Why can't that be true of the entire Federal Government? Why can't the NCAA buy every hat from the Bureau of Prisons? There are only two hat manufacturers left in America. They could team up with them. Why isn't every National Park Service hat purchased from FPI?

And so you can't put a man in prison or a woman in prison for 15 years and give them no work and no dignity. This would not displace an American job, but would repatriate work from China and other countries, and help support a proven way to end recidivism and make some progress in reducing our prison population.

I'm also dissatisfied and disappointed with your noncommittal response to my suggestion that Justice consider an assessment of path-breaking work being done in States on prison reform. This is clearly where a lot of new thinking has taken place, and we need to benefit from it.

Before last year's hearing, you and I talked about visiting a prison together, but nothing came of it. We never heard from you. You never, ever followed up.

Mr. Fattah and I are interested in establishing a national commission, and we're going to do it here in this committee, to look at reform options in a comprehensive and fair manner, and it seems to me it is something the Department should embrace, but I'm not going to hold my breath to wait for the embracement.

I must also express my disappointment with the way you have truly abused, and I cannot say it with strong enough words, the reprogramming process. The committee includes language in the bill each year to provide the Department with the flexibility to reallocate funds between programs to address emerging needs. The reprogramming process has developed over the years to allow such flexibility, while still preserving congressional priorities and intent.

Last year you disregarded the committee's direction, the Congress' direction and proceeded with an unprecedented $165 million reprogramming to support the purchase of the Thomson prison in Illinois, something that was actively sought as an earmark by Senator Durbin. In fact, it was an earmark; it wasn't in the President's budget. It would have been an earmark here, and it is an earmark. It is an earmark, and it basically violates just not the law, it violates the basic sense and process that we've had, but was not included in the President's budget nor in any appropriations act. In fact, Congress had denied a similar reprogramming in FY '11 and subsequently rescinded the funds that had been identified by the Department as a potential source for the Thomson purchase.

The fallout from this ill-advised decision is still being felt. First, you have undermined your relationship with your funding committees. The reprogramming process is based on comity, respect, willingness to talk to one another between the branches, and should respect the prerogatives of both branches. The Senate committee included some pertinent language in the FY '13 report. It says, "In the absence of comity and respect for the prerogatives of the committees and Congress in general, the committee will have no choice but to include specific program limitations and details legislatively. Under these circumstances, programs, projects, and activities become absolutes and the executive branch shall lose the ability to

propose changes in the use of appropriated funds through the reprogramming process," under the quote.

And this is what has come to pass. In the absence of trust and comity, the Congress enacted an FY '13 bill that significantly reins in your ability to reprogram and transfer funds. Because of your activity, it actually hurts, it hurts future Attorneys General that will follow you, whenever that time may be.

Secondly, by frittering away the $165 million to satisfy an earmark request in the face of strong opposition from the committee, you have severely eroded your ability and the ability of Congress to address your very serious funding problems in this fiscal year and next, problems which have already necessitated extraordinary measures just to avoid furloughs. Let's be clear, the FBI agents, the Bureau of Prison correction officers and many other Department employees could be furloughed, if not this year, perhaps next year, for the lack of funds that were foolishly spent last year on Thomson. To have allowed this to happen, in my opinion, is bad judgment and poor leadership. Had the furloughs taken place, you could call them the Holder furloughs or the Holder RIFs, if you will.

I understand that even though you could be facing sequestration and furloughs in FY '14, you are requesting yet more funding for Thomson. Perhaps a more fiscally responsible approach would be to sell the prison to the highest bidder and seek to use the proceeds to provide needed support to ongoing prison operations and the activation of the BOP facilities.

I'm disappointed and frustrated at the snail's pace in action by the Department in addressing other serious problems, some solvable human trafficking problems. You indicated to the committee last year you would reach out to the Polaris Project to find ways to collaborate on rooting out human trafficking, and we have discussed taking action to shut down the advertising of sexual services on backpage.com, but again, we have seen no movement.

We sent you a letter; we, in fact, sent you many letters, and we never get an answer. We have had out in northern Virginia a number of cases where young women have been sexually trafficked. Some have been involved with regard to backpage. We can't get an answer from you with regard to backpage.com, and the fact that you have been reluctant to even deal with that issue is very, very troubling.

We're still waiting for a response to my letter calling for reform of the Civil Rights Division, especially the Voting Section. The recent inspector general review showed a long-standing pattern of dysfunctional, harassment—this is the IG. This isn't a Member of Congress up here; this is your own IG appointed by you. You must have had some impact—showed a long-standing pattern of dysfunction, harassment, and unprofessional behavior in operations there, and demands a strong response.

The inspector general referred some remaining personnel to the Department for possible discipline—my understanding is there has been no discipline taken, and no maybe administrative action taken—and expressed concern about continued policies that should cast doubt on the impartiality of the Voting Section. I recommended an independent outside review, to make reform rec-

ommendations. Surely this is something that we can put into motion, yet I have seen no action on your part.

And in the area of executive use of agency aircraft, I'm troubled by the GAO report that 41 percent of the Attorney General travel from 2007 to 2011 was for personal reasons. I know the Attorney General is a "required use" official who must use official transportation. I have to wonder, do you ever have second thoughts about any of the travel? If you think about a couple of the trips, do you ever say, I don't know that that was the best use of taxpayer money, particularly because we're going through the sequestration issue?

There are other areas we have been trying to work with the Department on priority issues, and it's discouraging to feel that we're not able to get some traction on critical issues. The letters, the last three letters, no response, not even an acknowledgment from the Department.

Returning to the budget, you're testifying today on the fiscal year 2014 Department of Justice budget request. Excluding scorekeeping adjustments and rescissions, you're requesting $28.1 billion in new discretionary budget authority and an increase of $1.5 billion, at 3.9 percent above FY '12 enacted level before sequestration.

Your FY '14 request reflects some significant initiatives with sizable offsets. The increase includes $382 million in funding to ATF and the FBI to expand gun law enforcement and background checks, and to grant programs for gun safety technology and funding for State criminal history improvements. This also includes $150 million in new COPS funding for a broad Comprehensive School Safety Program, with transfer authority and funding for a variety of positions, both law enforcement, social workers, and others.

The budget also includes $668 million for cybersecurity, with about $92 million in increases for the FBI. You are seeking $55 million in new funding to investigate and prosecute financial mortgage fraud. To address prison overcrowding and detention needs, you seek $291 million to activate new prison facilities and expand detainee resources.

We'll have questions regarding the investigative and surveillance capabilities, human trafficking, and the Department's efforts to address cyber and gun violence. We also expect to ask how the Department's efforts to ensure and enforce civil right law meet the highest standards of professionalism and objectivity. We would expect to hear more about how the Department will address the ongoing challenge of operating under sequestration.

Finally, before I yield to Mr. Fattah for his statement, I would like to take a minute to recognize ATF Special Agent Scott Sammis for 5 years of outstanding service to the committee. Scott was first detailed to the CJS Subcommittee staff in January of 2008 under Chairman Mollohan and has served the committee with great distinction for the past 5 years. Scott is returning to ATF headquarters next week, and we all wish him well and much success.

Scott, you are a credit to the ATF and to the Department, and we thank you very much for your service.

Mr. WOLF. Mr. Fattah.

OPENING STATEMENT—MR. FATTAH

Mr. FATTAH. Thank you, Mr. Chairman.

First and foremost, let me welcome you to the committee. I know that there are many things that are immediately focusing your interest and concern, including the incident in Boston, and I know that the entire Justice Department, the FBI, the ATF and your offices and others are focused on this matter, and I know that time is limited.

I would respond to each of the criticisms that have been offered by my great friend, the chairman, and we are truly good friends, and we work well together, but needless to say, it's not surprising that the majority party, different from the President's party, might take issue with some of the activities of a Cabinet member, and it's been part of the pattern. You can't, obviously, represent the administration's point of view and represent the House point of view because there are two drastically different points of views on almost every subject.

But in this particular matter what we are focused on is your appropriations request, what are the dollars that you need to run the agency that's responsible for protecting American citizens? And for years now you have done an extraordinary job, and the Department of Justice and all of the men and women under your control have done a great job in this respect of dealing with a whole range of issues. And so we're going to get into the accounts and what you need.

Needless to say, you know, we could respond to each and every point. I do, however, agree with the chairman that we need the—the Thomson prison issue did, I think, step on the normal processes of the appropriations process, and as an appropriator, obviously, I would be concerned about that.

But I welcome you. I know that your time is important today, as it is on every day, and the chairman was wondering whether you would question some of your trips. I'm sure you probably question any trip you have to make up to the Hill. So, but we appreciate the fact that you're here, and I yield back.

Mr. WOLF. Thank you, Mr. Fattah.

I'm going to go to Mr. Rogers and Mrs. Lowey, and then we will swear the Attorney General in.

Mr. Rogers, chairman of the full committee.

OPENING STATEMENT—MR. ROGERS

Mr. ROGERS. Mr. Chairman, thank you for yielding this time.

General, thank you for being here.

Attorney General HOLDER. Good to see you.

Mr. ROGERS. Welcome. We all are wishing you well in the investigation and the prosecutions of those who perpetrated this cowardly act in Boston. So we wish you well in that regard.

Your fiscal '14 request, $28.1 billion, that's almost a 4 percent increase over current levels. But aside from some increases for new gun control efforts, funding for most law enforcement accounts remain flat. Understanding the difficult budgetary constraints under which you're operating, and we all are, particularly the rapidly escalating costs within our Federal prison system, we look forward to

hearing from you about the impacts of this flat funding to the operational capabilities of our law enforcement officials on the front lines.

In addition, I'm concerned by a number of budgeting gimmicks, misplaced priorities which undermine the integrity of your request. Once again, the Bureau of Prisons budget is relying on the enactment of authorizing legislation outside the jurisdiction of this committee to achieve $41 million in savings despite the fact that this same request was rejected in the last 2 fiscal years.

You've also continued to rely on rescissions to finance your discretionary budget, including some $392 million from core law enforcement accounts. The committee expressed grave concern with this tactic last year, and I must once again question the wisdom of employing budget gimmicks with the funding that supports our U.S. marshals, the FBI, the DEA, the ATF agents putting themselves in harm's way on a daily basis.

And, finally, I'm dismayed to see a request in the President's budget to remove the prohibition on transferring GTMO detainees to U.S. soil. This prohibition was supported in a bipartisan basis in the fiscal '13 bill. The recent uptick in violence at Guantanamo should give us cause for concern and even more reason to keep these dangerous individuals at arm's length.

All of that said, on a more personal note, I do wish to thank you for your continued interest in the prescription drug abuse epidemic, as it was called by the national Centers for Disease Control. It began in my rural congressional district over a decade ago and has now emerged as our Nation's fastest-growing drug threat, and, as I said, the Centers for Disease Control calls it a national epidemic, killing more people than car wrecks.

Your Department and you personally have been engaged and responsive. In particular, I want to thank you for allowing a number of representatives from the Department to participate in the National Prescription Drug Abuse Summit in Orlando, Florida, where earlier this month nearly a thousand individuals from around the country gathered to discuss holistic solutions to prescription drug abuse. So I value our partnership in that regard and feel that together we are making some significant progress in the shared mission to beat back on this scourge.

So we wish you well. We have a number of questions we would like to raise with you. We're at the very beginning of the budget season, and it's, a lot of it, uncharted waters for you and me and us, but we want to work with you to work out the best answers. Thank you.

Mr. WOLF. Mrs. Lowey.

OPENING STATEMENT—MRS. LOWEY

Mrs. LOWEY. Thank you, Mr. Chairman, and welcome, Attorney General Holder. We appreciate your coming before the subcommittee today.

It is the core mission of the Department of Justice to enforce the laws and defend the interests of the United States, including protecting the public against all enemies, foreign and domestic. And today the country continues to mourn the senseless acts of violence and terror that occurred on Monday afternoon in Boston, and our

thoughts and prayers are with the victims and their families. I know all of us on this committee want you to have every resource you need to investigate this act of terror and bring the perpetrator to justice.

We cannot minimize the threats against our Nation, as we've seen with this tragedy in Boston and positive tests of toxic substances in mail intended for the President and Members of Congress, and in many communities firearms in the hands of dangerous individuals account for additional threats. In December our Nation mourned the unspeakable tragedy in Newtown. In the days since, 3,482 Americans have lost their lives due to a gun, 3,482. There should be no controversy about universal background checks. There should be no controversy about keeping firearms out of the hands of dangerous people.

Mr. Attorney General, you are the Nation's top law enforcement official. During this hearing I look forward to hearing how the budget request would make our communities safer, take firearms out of the hands of those who seek to do us harm, and provide first responders and law enforcement officers the resources to protect our communities, investigate crimes, and prosecute offenders.

Again, I would like to thank Chairman Wolf and Ranking Member Fattah for this hearing and for you, Attorney General Holder, for joining us today. Thank you.

Mr. WOLF. Pursuant to the authority granted in section 191 of Title II of the United States Code and clause 2(m)(2) of the House rule XI, today's witness will be sworn in before testifying. Please rise and raise your right hand.

[Witness sworn.]

Mr. WOLF. Let the record reflect that the witness answered in the affirmative.

Welcome, Mr. Attorney General. The committee looks forward to hearing you. Your full statement will appear in the record, and you can summarize as you see appropriate.

OPENING STATEMENT—MR. HOLDER

Attorney General HOLDER. Good afternoon, Chairman Rogers, Chairman Wolf, Ranking Member Fattah, and distinguished members of the subcommittee. I appreciate this opportunity to discuss the President's fiscal year 2014 budget for the Department of Justice and to provide an overview of the Department's recent achievements and our important ongoing work.

In the days ahead, as my Justice Department and FBI colleagues continue to work closely with our Federal, State, and local partners to investigate the tragedy that took place in Boston on Monday, your continued support will be more critical than ever. I join every member of this subcommittee in expressing my deepest sympathies to the victims of this cowardly terrorist act and to those who lost friends and loved ones.

I want to assure you, the citizens of Boston, and all Americans that we are working tirelessly to determine who was responsible for this incident. To this end, I have directed that the full resources of the Department be deployed to ensure that this matter was thoroughly investigated, to prevent any future attacks from occurring, and to make certain that the individual or group that carried out

this heinous act is held accountable to the fullest extent of the law and by any means available to us.

The Department also will continue to strengthen and refine our broader national security efforts and to move aggressively in identifying, disrupting, and investigating plots by foreign terrorist organizations as well as by homegrown extremists. Since 2009, we have established a strong record in this regard, bringing cases and securing convictions against numerous terrorists.

The President's budget request includes $4 billion to maintain these national security efforts, but it also provides critical support for a range of public safety programs that impact our citizens' daily lives, including $395 million to support the administration's commonsense recommendations for preventing and reducing gun violence.

Along with the comprehensive gun violence reduction plan that the President announced in January, this budget request will allow us to respond to events like the horrific mass shooting that we saw last December in Newtown, Connecticut, by making our communities and schools more secure.

Just days after the tragedy at Sandy Hook Elementary School, I traveled to Connecticut. I met with first responders and crime scene investigators, and I walked the halls where these unspeakable events took place. When those brave men and women asked me with tears in their eyes to do everything in my power to keep such a thing from happening again, I told them that I would not rest until we had secured the changes that our citizens need and that they have shown overwhelmingly that they want.

Now, despite my disappointment, and, quite frankly, my frustration, I think even my anger, at the filibuster in the Senate yesterday that led to the failure to adopt some of these changes despite the fact that a majority voted for them, I and my colleagues throughout the administration remain committed to standing with the families of Newtown, with countless others who have lost their lives in senseless acts of gun violence across the country, and with all those whose lives and futures are shattered by this violence every day in our city streets. On behalf of these victims, survivors, and their families, my colleagues and I will continue to fight for commonsense reforms to keep deadly weapons out of the hands of dangerous people without infringing on anybody's Second Amendment rights.

The President's budget request, along with the administration's gun violence reduction proposals, will enable us to do just that. Beyond these efforts, this budget request will bolster existing programs for combating violence in all its forms, cracking down on child exploitation and sexual assault, and becoming both smarter and tougher on crime. It will invest $2.3 billion in innovative programs to ensure that law enforcement officers can do their jobs more safely and effectively than ever before. It will provide increases totaling $55 million to continue the fights against financial and mortgage fraud, and it will allocate more than $250 million to support the Civil Rights Division's efforts to address bias, intimidation, and discrimination from America's housing and lending markets to our schools, workplaces, border areas, and our voting booths.

Now, unfortunately, our capacity to build upon this comprehensive work has been negatively impacted by sequestration, which recently cut over $1.6 billion from the Department's budget. These cuts have a detrimental effect on our employees, on the administration of justice in communities nationwide, and on our support for allies across America's law enforcement community.

Despite our best efforts to reduce expenses, I'm very concerned about the Department's ability to keep the FBI, the ATF, the DEA, the U.S. Marshals Service and other key staffs on the job both this year and next.

Less than a month ago, using my limited authorities to transfer and allocate existing funds, I provided $150 million to the Bureau of Prisons to avoid furloughing more than 3,500 correctional staff each day from Federal prisons around the country. This would have created serious life and safety threats for our staff, inmates, and the public. I want to thank Chairman Wolf, Ranking Member Fattah, and members of the subcommittee for their support of this action, but I must note that the solutions we used to alleviate sequester cuts in fiscal year 2013 will no longer be available to us to mitigate fiscal year 2014 funding shortfalls due to sequestration.

Put simply, these shortfalls would jeopardize programs that affect the safety of Americans across the country, and may undermine the really remarkable work that the Justice Department's nearly 116,000 dedicated employees, and particularly our hard-working career staff, carry out every day. I look forward to working with this subcommittee and with the entire Congress to ensure that these untenable cuts are not allowed to continue and to secure the timely passage of the President's budget request, which allocates a total of $27.6 billion for the Justice Department. This support will be essential in ensuring that the Department has the resources that it needs to fulfill its critical mission.

I want to thank you once again for the opportunity to discuss these efforts with you today, and I would be more than glad to answer any questions that you might have.

Mr. WOLF. Thank you, Mr. Attorney General.

[The information follows:]

STATEMENT OF ERIC H. HOLDER JR.
ATTORNEY GENERAL OF THE UNITED STATES
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

April 18, 2013

Good morning, Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to highlight the President's Fiscal Year (FY) 2014 Budget for the U.S. Department of Justice – and to discuss the Department's recent achievements and future priorities. I would also like to thank you for your support of the FY 2013 Supplemental Disaster Relief Act and the FY 2013 Consolidation and Continuation Appropriations Act, which provide important resources for our law enforcement, correctional, and litigation operations.

In the days ahead – as my Justice Department and FBI colleagues continue to work closely with our federal, state, and local partners to investigate the tragedy that took place in Boston on Monday – this type of support will be more critical than ever. I join every member of this Subcommittee in expressing my deepest sympathies to the victims of this cowardly terrorist act, and to those who lost friends and loved ones. I want to assure you, the citizens of Boston, and all Americans that we are working tirelessly to determine who is responsible for this incident. To this end, I have directed that the full resources of the Department be deployed to ensure that this matter is thoroughly investigated, to prevent any future attacks from occurring – and to make certain that the individual or group that carried out this heinous act is held accountable to the fullest extent of the law, and by any means available to us.

As you are aware, automatic spending reductions – known as sequestration – recently cut over $1.6 billion from the Department's budget, leaving very little flexibility in how the cuts are applied. The sequester is having a significant impact on the Department's operations – affecting not only employees, but our ability to ensure the administration of justice in communities across the Nation. As a result, we have carefully and thoughtfully reviewed our spending levels and redoubled ongoing efforts to reduce expenses throughout the Department. Spending restrictions have been identified and established in the areas of hiring, contracts, travel, training, conferences, non-law enforcement employee overtime, and monetary awards.

While I recognize the need to take action to absorb these deep cuts, our actions must not threaten the critical operations of the Department that are necessary to protect life and safety. In

March, using my limited authorities to transfer and allocate existing funds from within the Department, I provided $150 million to the Bureau of Prisons (BOP) to avoid furloughing correctional workers at our prison institutions. Without this intervention, we would have been forced to furlough 3,570 staff each day from the federal prisons around the country. The loss of these correctional officers and other staff who supervise the 175,000 prisoners at 119 institutions would have created serious threats to the safety and security of our staff, inmates, and the public. Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee, thank you for your full and immediate support of our action to provide relief to BOP.

However, I must note that I remain concerned about our ability to keep the Federal Bureau of Investigation (FBI), United States Marshals Service (USMS), and other staff on duty to fulfill the Department's missions. The solutions that we used to alleviate sequester cuts in FY 2013 will no longer be available to mitigate FY 2014 funding shortfalls.

This could threaten programs that affect the safety of Americans across the country, and undermine the remarkable work that the Department's nearly 116,000 dedicated employees have made possible over the last four years. Today, I affirm the Department's commitment to continue building on this work – to protect the Nation from terrorism and other national security threats, combat violent crime, eradicate financial fraud, and safeguard the most vulnerable members of society. While fulfilling this commitment, I will continue to explore innovative techniques to carry out our missions more efficiently – and to make targeted investments to protect the safety and security of the American people, our critical national infrastructure, and global financial markets.

The President's FY 2014 Budget request for the Department is $27.6 billion. The request represents a 3.0 percent increase over the FY 2012 enacted level. More specifically, the President's FY 2014 Budget request:

- **Provides increased funding for adjustments to existing federal programs.** The request provides $566.7 million over the FY 2012 enactment to fund adjustments in key areas where there is little short-term flexibility, such as rent costs, foreign expenses, prison operations, and restoring cancelation of balances. The request also funds employee pay adjustments.
- **Enhances critical counterterrorism and counterespionage programs intelligence gathering and surveillance capabilities.** The request includes $14 million in program increases for technological and human capital resources to detect, disrupt, and deter threats to our national security.
- **Supports the administration's plans to reduce gun violence.** The request invests $395 million in federal programs to support the Administration's plan. This includes $100 million to double the existing capacity of the FBI's National Instant Criminal Background Check System (NICS), in anticipation of a universal background check requirement, and $73 million for additional Bureau of Alcohol, Tobacco, Firearms and

Explosives (ATF) investigative and regulatory capabilities. It also includes improvements in ATF's tracing and ballistics systems. In addition, the request provides $222 million for grant programs to assist states in making more records available in the NICS system, to improve school safety, to support officer safety programs—including a joint Office of Justice Programs (OJP)/FBI training for active shooter situations, to provide incentives for state and local governments to update NICS data with criminal history and mental health information, and to encourage the development of innovative gun safety technology.

- **Enhances efforts to combat and keep pace with increasingly sophisticated and rapidly evolving cyber threats.** The request provides $92.6 million in program increases to improve the ability to share information in a timely and accurate manner, to develop forensic capabilities for a cloud architecture, to increase cyber collection and data analysis, to provide prompt victim notification and response, and to enhance the Department's cyber policy scope.
- **Invests in law enforcement efforts targeting financial fraud.** The request includes $55 million more to improve the Department's capacity to investigate and prosecute a broad range financial fraud, including securities and commodities fraud, investment scams, and mortgage foreclosure schemes.
- **Strengthens enforcement of immigration laws.** The request invests $25 million in additional personnel to process the increasing workload and improve the efficiency of our overall immigration enforcement efforts.
- **Invests in federal civil rights enforcement.** The request provides $9 million, of which $1.5 million is included as part of the Department's financial fraud investments, to enhance the Department's enforcement of federal civil rights laws, including human trafficking, hate crimes, police misconduct, fair housing, fair lending, disability rights, and voting rights.
- **Supports federal prisons and detention operations.** The request invests $236.2 million to continue to maintain secure, controlled federal criminal detention and prison facilities and additional programming to reduce recidivism.
- **Enhances state, local, and tribal law enforcement programs.** The request invests $2.3 billion, which is a net increase of $201.3 million over the FY 2012 level. The Budget includes critical resources for police hiring, programs targeting violence against women, school safety, and general purpose criminal justice programs. The Budget expands programs that have demonstrated success, including new programs that are structured on evidence-based principles, and programs to reduce gun violence.

As I testified during my first appropriations hearing four years ago, I will continue to pursue a very specific set of goals:

First, my colleagues and I will continue to bolster the activities of the federal government that protect the American people from terrorism and other threats to our way of life. We will use every lawful instrument to hold terrorists accountable for their actions and bring them to justice.

Second, we will continue to enhance the credibility of the Department while promoting equality, opportunity, and justice for all.

Third, we will continue to strengthen the traditional missions of the Department. In partnership with government, law enforcement, and industry leaders, we will enforce the law and defend the interests of both consumers and the United States.

In addressing these priorities, I am profoundly grateful for the contributions of Justice Department employees here in Washington and around the world – and I look forward to the continued support of this Subcommittee and Congress, as a whole.

Protecting the American People from Terrorism and other National Security Threats

The FY 2014 Budget includes a total of $4.4 billion to maintain critical national security programs within the Department. National security threats are constantly evolving and adapting, often requiring additional resources to address new critical areas. Increasing global access to technological advancements can result in new vulnerabilities that the Department must be prepared to address. This request includes $14 million in program increases that provide the technology and personnel needed to effectively identify, obstruct, and avert threats to our national security.

Preventing, disrupting, and defeating terrorist acts before they occur remains the Justice Department's highest priority. Since 2009, the Department has thwarted multiple terrorist plots against the United States. In 2012, the Department obtained a conviction against Naser Jason Abdo for his role in a plot to use explosives to attack soldiers from Fort Hood. He was sentenced to life in prison. We also secured a conviction – and a life sentence – in the case of Adis Medunjanin, for his role in a plan to carry out a suicide terrorist attack in New York City.

In addition, the Department has successfully executed ground-breaking counterintelligence operations to safeguard sensitive U.S. military and strategic technologies and keep them from falling into the wrong hands. In 2012, Bryan Underwood, a former guard at a U.S. Consulate under construction in China, pleaded guilty in connection with his efforts to sell classified photographs and information about the U.S. Consulate to China. Working closely with our U.S. and international partners, we disrupted an international network conspiring to illegally export U.S.-origin materials to Iran for the construction of gas centrifuges used to enrich uranium. We also disrupted a Russian procurement network in the United States that was illegally exporting U.S. microelectronics to Russian military and intelligence agencies.

From terrorists seeking to sabotage critical infrastructure; to organized crime syndicates and cyber criminals attempting to defraud banks, corporations, and individuals; and other criminals searching for new ways to steal defense and intelligence secrets and intellectual property – our Nation's economy and security are under constant threat from domestic and foreign sources. In the past year, Michael Patrick Sallnert pled guilty in connection with his role in an international cybercrime ring believed to have caused more than $72 million in total losses to more than one million computer users through the sale of fraudulent computer security software known as "scareware." And we obtained a conviction against Shanshan Du and Yu Qin for conspiring to steal General Motors trade secrets with the intent to use them in a joint venture with an automotive competitor in China.

The Department continues to maintain and strengthen its own cyber security environment to counter cyber threats, including insider threats, and to ensure its personnel have unimpeded access to the IT systems, networks, and data necessary to fulfill their missions. In 2012, the FBI established Cyber Watch as its 24/7 operations center for cyber intrusion prevention and response operations.

Combating Violence and Other Crimes Against the American People

Gun violence has touched every state, county, city, and town in America. Especially in the wake of December's horrific events in Newtown, Connecticut, the need to address this problem has come into sharp focus. Since then, the Department has been working with the White House – and our colleagues across the Administration – to develop and implement concrete, common-sense steps to combat the gun violence that devastates too many lives and communities every day.

The FY 2014 Budget provides funding and programs to reduce gun violence and prevent future tragedies. The Department of Justice seeks to invest $395 million to strengthen the national background check system; enhance our investigative and regulatory resources; improve our tracing and ballistics systems; and assist law enforcement personnel in the dangerous work of protecting the American people from violence. The Department recognizes that gun violence is not just a federal problem, and our partners at the state, local, and tribal levels stand on the front lines of the critical work to keep our people safe – and our cities, neighborhoods, and schools more secure.

In the past year, the Department has spearheaded a number of collaborative efforts between federal law enforcement agencies and local police departments to combat violent crime in some of the most seriously afflicted neighborhoods across the country. As part of this initiative, the Department has enhanced its ability to re-target federal resources to areas experiencing the highest levels of violence. For example, last summer in Philadelphia, the U.S. Attorney's Office for the Eastern District of Pennsylvania charged 92 defendants in 77 indictments; ATF made 84 federal and 17 state arrests; USMS arrested over 300 fugitives

charged with violent crimes and crimes closely associated with violence; DEA made 258 arrests for drug related offenses; and the FBI made over 140 arrests. As a result, we have seen violent crime significantly decline in these areas. As we've repeatedly seen, effectively combating violent crime demands that – with the help and leadership of our U.S. Attorneys' Offices, as well as the FBI, ATF, DEA, and USMS – we will continue to use every tool, resource, and authority to crack down on the gang-, gun-, and drug-fueled violence that menaces our streets and threatens our communities. Through intelligence-driven, threat-based prosecutions – we will focus on dismantling criminal organizations and putting them out of business for good. We will continue to measure the effectiveness of our endeavors in these crime-ridden areas to ensure that our efforts result in significant and lasting positive outcomes.

In addition to protecting our communities, the Department is working to safeguard our environment – and to hold accountable those responsible for the *Deepwater Horizon* disaster. In November 2012, BP Exploration and Production Inc. pleaded guilty to eleven counts of felony manslaughter, one count of felony obstruction of Congress, and violations of the Clean Water and Migratory Bird Treaty Acts for its conduct relating to the 2010 *Deepwater Horizon* disaster that killed 11 people and caused the largest environmental disaster in U.S. history. As part of its plea, BP agreed to pay a record $4 billion in criminal fines and penalties. In addition, the two highest-ranking BP supervisors on the *Deepwater Horizon* oil rig were charged with 11 counts of manslaughter, and a former senior BP executive was charged with obstruction of Congress. In January 2013, Transocean Deepwater, which operated *Deepwater Horizon* oil rig, agreed to plead guilty to violating the Clean Water Act and to pay a total of $1.4 billion in civil and criminal fines and penalties for its conduct in relation to this tragedy. Nearly 80 percent of these penalties will be distributed directly to the Gulf States as dictated by Congress under the RESTORE Act.

As we continue to investigate the explosion that led to the *Deepwater Horizon* oil spill, my colleagues and I are determined to hold accountable those who violated the law, pursue appropriate action to recover civil penalties under the Clean Water Act, and hold all parties liable for natural resource damages under the Oil Pollution Act.

Eradicating Financial Fraud

Beyond this work, the Administration and the Department remain committed to combating financial and mortgage fraud that harms the financial security of the American people and threatens national economic stability. The President's budget request provides program increases totaling $55 million to improve the Department's capacity to investigate and prosecute allegations of such conduct.

In the past year, the Department has launched numerous investigations into those engaged in financial fraud – and these efforts are yielding significant results. For instance, we secured a $160 million penalty from Barclays Bank, PLC, to resolve allegations related to the

role Barclays played in attempting to manipulate its submissions for the London Interbank Offered Rate (LIBOR), which is used as a benchmark interest rate in financial markets around the world. We also obtained convictions against three former UBS AG executives – Peter Ghavami, Gary Heinz and Michael Welty – for their participation in frauds related to bidding for contracts for the investment of municipal bond proceeds and other municipal finance contracts.

In connection with its ongoing investigations into the manipulation of LIBOR and other global benchmark interest rates, the Department obtained admissions establishing criminal liability from three major financial institutions in 2012 and 2013 – including corporate guilty pleas from the responsible subsidiaries of two banks. We received more than $800 million in related penalties, which was part of a total $2.5 billion in settlements paid by the banks to resolve their liability with U.S. and foreign regulators. And the Department charged two derivatives traders individually for their role in this scheme.

Fortunately, this is only the beginning. The Department also continues to make progress toward achieving justice for victims of mortgage fraud. In 2012, the Department played a major role in obtaining the largest joint federal-state settlement on record – against the nation's five largest mortgage services – resulting in $25 billion in financial penalties and extensive consumer relief. We secured a $175 million fair lending settlement against Wells Fargo Bank to resolve allegations involving a pattern or practice of discrimination against qualified African-American and Hispanic borrowers in its mortgage lending from 2004 through 2009.

In February 2013, the Department filed a civil lawsuit against Standard & Poor's Financial Services – as well as its parent company, McGraw-Hill – alleging that the credit rating agency S&P engaged in a scheme to defraud investors in financial products known as Residential Mortgage-Backed Securities, or RMBS, and Collateralized Debt Obligations, or CDOs. We alleged that, by knowingly issuing inflated credit ratings for CDOs – which misrepresented their creditworthiness and understated their risks – S&P misled investors, including many federally insured financial institutions, causing them to lose billions of dollars. In addition, we alleged that S&P falsely claimed that its ratings were independent, objective, and not influenced by the company's relationship with the issuers who hired S&P to rate the securities in question – when, in reality, the ratings were affected by significant conflicts of interest, and S&P was driven by its desire to increase its profits and market share to favor the interests of issuers over investors.

Safeguarding the Most Vulnerable Members of Society

My colleagues and I are determined to uphold the civil and constitutional rights of all Americans, particularly the most vulnerable members of our society. The FY 2014 Budget includes $258.6 million to support the Department's vigorous enforcement of federal civil rights laws, including laws that address human trafficking, fair housing, fair lending, disability rights, and voting. This request includes an additional $9 million for the Civil Rights Division and

Community Relations Service, of which $1.5 million is included as part of the Department's financial fraud investments.

In 2012, the Department charged a record number of human trafficking cases. Through expanded partnerships with state and local law enforcement agencies, foreign governments, and non-governmental organizations, we prosecuted 73 human trafficking cases. We obtained a conviction – and a life sentence – against Weylin Rodriguez, for his role in sex trafficking and his violent use of firearms in recruiting three minor females and two young adults to work as prostitutes. We prosecuted Kala Bray, who was later sentenced to 14 years in prison, for her role in a conspiracy to engage in child sex trafficking by force, fraud, and coercion.

In addition to these high-profile cases, we secured the longest sentence ever recorded in a forced labor case, in which a defendant received a sentence of life plus 20 years for his role in a transnational organized criminal network that exploited Ukrainian men and women for labor on commercial cleaning crews in the Philadelphia area – by using threats, violence, and sexual assaults to intimidate and control the victims. We also convicted and secured life sentences against one sex trafficker who exploited young, vulnerable Micronesian women in brothels in Guam – and another who targeted Eastern European women and used brutal beatings, rapes, and threats to control every aspect of their lives – branding them with tattoos and compelling them into forced labor and prostitution.

Lastly, the Department remains focused on reinvigorating its fair housing and fair lending enforcement – and working to ensure that local governments and private housing providers offer safe and affordable housing on a non-discriminatory basis. In the past year, we secured a record monetary settlement in a fair housing accessibility case, including the largest civil penalty in any Fair Housing Act case.

Conclusion

Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee, I want to thank you for this opportunity to discuss my concerns about the adverse impact of sequestration on the Department, to highlight the Department's ongoing priorities, and to share our plans to strengthen our efforts in FY 2014.

As we speak, the Department is confronting significant funding and operational challenges across every component. Our ability to rise to these challenges will have serious consequences for the administration of justice. I am deeply troubled by the impact that the sequester will have on the Department's capacity to prevent terrorism, combat violent crime, and protect the most vulnerable among us. Despite the obstacles ahead – and the significant challenges we face every day – the Department remains committed to fulfilling our responsibilities to protect the American people, even as we navigate this period of fiscal uncertainty.

As we do so, we will continue to identify additional efficiencies and cost-saving measures – while making our programs and activities as efficient and effective as possible. I look forward to working with this Subcommittee and with the entire Congress to build on the record of achievement we've established over the past four years. And I am happy to answer any questions you may have.

Mr. WOLF. In the interest of time, I'm not going to ask any questions until the very end, because I live here and don't have to worry about airplanes. I would ask Members who have never used a gavel, but know that there are people who—so if you can kind of, you know what I mean. First to Mr. Fattah, then to Mr. Rogers, and then Mrs. Lowey, and then we'll go that way. But Mr. Fattah.

Mr. FATTAH. I'm going to follow the chairman's lead in the sense that not only do Members have to fly, I understand that you have important business involving our Nation, so I will yield and deal with questions at a later point.

Mr. WOLF. Mr. Rogers.

PRESCRIPTION DRUG MONITORING PROGRAM

Mr. ROGERS. General Holder, as I said before, I appreciate your work on the prescription drug abuse problem, and one of the most important things that has taken place is the installation in now 49 States of the Prescription Drug Monitoring Programs, where assumedly doctors and nurses and those that prescribe medicine are able to check on a statewide computer network to be sure that the person they're seeing and prescribing medicine for is not doctor shopping, even across State lines. That's been very effective.

However, two main problems, or three main problems. One, a very low percentage of doctors are using that system. Secondly, it's not real time. There's days at least, maybe even weeks, of delay between when a person is—a prescription is registered in the system before it shows up. And, thirdly, it needs to be interoperable across State lines, because a person can doctor shop across a State line, and unless they're connected to the PDMP in their home State, it never shows up.

What can you tell us about those three problems with the PDMP system?

Attorney General HOLDER. Well, first, I would agree with what you said in your opening remarks, that this whole question of prescription drug abuse is truly a national problem. It is one that we have to dedicate attention to, resources to. I think the work that you have done to raise the consciousness of this Nation to that problem has been laudable, and I would note that the Prescription Drug Monitoring Program is, in fact, named after you, and I think there's good reason.

The Department has provided grants and technical assistance in that regard. I think we have $7 million in our budget for the Monitoring Program, but I think the concerns you raise are, in fact, legitimate ones. We have to understand that a national problem can't be hampered by State borders. We can't allow State borders to have a negative impact on our ability to deal with something that crosses State lines quite easily. So we would like to work with you and come up with ways in which we can make this program as effective as we possibly can.

Mr. ROGERS. And tell us what you're doing to eventually get all 50 States interconnected in one system.

Attorney General HOLDER. Well, what we are trying to do is, enhance the systems to track controlled substances that are prescribed by practitioners and dispensed by pharmacies. That's one of the reasons why the monitoring component of our request in this

area is so important. We're looking for ways in which we can support efforts to monitor across the Nation and do all that we can to ensure that this national problem gets the national attention that it deserves.

Mr. ROGERS. Well, I appreciate your work on it, and it's complex, it is—it requires a holistic approach. We find that the—that most young people get hooked on OxyContin or a similar type drug by accessing the home medicine cabinet where you get a bottle of pills—if you went to the doctor and—went to the dentist, and he says, you may not need these, but here's a bottle, and you put it in the medicine cabinet and forget about it, and then a youngster finds that bottle, it's prescription medicine, so it's safe, and before you know it, they're hooked, in many cases dead. That's happened so many times in my district and around the country.

So this is a, as you say, a national problem. You've been very helpful and effective in shutting down most of the pill mills in Broward County, Florida.

Attorney General HOLDER. Which I can spell.

Mr. ROGERS. Pardon me?

Attorney General HOLDER. Which I can spell, remember?

Mr. ROGERS. But you went to work on that problem along with the State officials and others, and you have shut down most of the pill mills. At one time 9 out of 10 prescriptions for opioid medicines in the U.S. were made in Broward County, Florida, but you've been very effective in that regard, and I appreciate it very much.

The other thing I wanted to ask you about is the hydrocodone rescheduling. DEA has been asking FDA to tighten the controls on the prescription of hydrocodone combination drugs for 10 years, and yet the FDA has dragged its feet. Why is it important that we reschedule these drugs into a class Schedule II?

Attorney General HOLDER. Well, if you look at the abuse that you see around hydrocodone—and I would say related drugs, but hydrocodone in particular—the amount of abuse that you see, the misery that that abuse causes, and unfortunately the pervasive use of it in certain parts of our country, it seems to us, and I agree with DEA, that the rescheduling would be appropriate. We hope to work with our partners at FDA to actually effectuate that rescheduling.

Mr. ROGERS. Well, the current Schedule III classifications for these drugs—and these are hydrocodone, but they're labeled Vicodin, Lortab—and because they're Schedule III, there is created a false sense among some patients and even doctors that these medicines are less potent or less habit-forming and, therefore, less dangerous than oxycodone painkillers, which is Schedule II. As a result, while most every opioid painkiller is scheduled as a Schedule II drug and more carefully regulated, America's most abused narcotic, hydrocodone, is missing from that Schedule II list. And that's important because under Schedule II, a written prescription would be required in order to receive these painkillers except in an emergency. The prescriptions cannot be called in; patients have to see the doctor to get a new prescription for each refill after 90 days, no automatic refill. And then, in addition, traffickers would be subject to harsher fines and penalties. And I would hope that you would use every ounce of your weight with the FDA to be sure that

we can reschedule those drugs to where we can help stop that problem.

Mr. Chairman, I have other questions I can submit for the record. I'll yield back.

Mr. WOLF. Thank you, Mr. Chairman.

Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman.

BACKGROUND CHECKS FOR FIREARMS

Mr. Attorney General, as you know, yesterday a majority of Senators did vote for a bipartisan background check amendment that would have made improvements to our current system. Unfortunately, and I'm deeply disappointed that the will of the majority of Senators is not enough to pass these important improvements, so I would like to know what steps you can take in your role as Attorney General to improve the background check process without the need for additional legislation, and what improvements should be made to the background check system to make it more effective at keeping guns out of the hands of the wrong people.

Attorney General HOLDER. Well, the background check system is an integral part of our efforts to keep the American people safe, and that's why, from my perspective, it was so disheartening to see something that has the support of 90 percent of the American people, the overwhelming majority of Democrats, Republicans, gun owners, even NRA members—to see a bill like that go down to defeat, but go down to defeat as defined in Washington nowadays where the majority of the Senate votes for it, but that's not enough. You've got to have a supermajority now because filibusters happen as a matter of routine.

What we can do is to keep trying to pass that commonsense legislation, but, beyond that, come up with ways in which we try to encourage the States to put more information into the NICS system by offering grants and making it easier to get that kind of information into the system; in addition to that, to look at the classifications of the kinds of people who are actually in the system, and to the extent that we can use executive power to do that, we are prepared to do so. The President, as part of his initiative, issued 23 Executive Orders, and it was an attempt to maximize the use of executive power to make real the promise that he made and that I made to the families in Newtown.

Mrs. LOWEY. I'm also deeply troubled, in fact, it's always shocking to me, that those on the terrorist watch list did not raise a flag in the NICS system. The President has asked that you revise the list of factors which determine eligibility to pass a background check for the purchase of a firearm. Could you explain how that could be?

Attorney General HOLDER. Well, the President has asked me to look at that, look at the categories of people who go into the database. That is certainly one of the ones that we look——

Mrs. LOWEY. Well, just focus on that for a minute.

Attorney General HOLDER. Yeah.

Mrs. LOWEY. Shouldn't we be closing that loophole? If you're on the terrorist watch list, you can still go out and buy a gun?

Attorney General HOLDER. Well, let me just say there are some in law enforcement who are not necessarily convinced that that is an appropriate thing to do. That is something that I have under advisement. I will take into account the concerns that are expressed by my law enforcement partners before a decision is made, but I share the concern that you have expressed about that.

Mrs. LOWEY. This concern has been around for a long time, Mr. Attorney General, and I can't see—now, there are mistakes on the terrorist watch list, but if you're being stopped and held up for an hour or so because you're on a terrorist watch list, then you can go off and just buy a gun? Can you get back to me as soon as possible on that?

[The information follows:]

TERROR WATCH LIST GUN PURCHASING LOOPHOLE

Under current federal law, there is no basis to prohibit a person from possessing firearms or explosives solely because they appear on the terrorist watch list. Rather, there must be a disqualifying factor (i.e., prohibiting information) pursuant to federal or state law, such as a felony conviction or illegal immigration status. That said, the FBI compares NICS transactions with the terrorist watch list. If a match to the terrorist watch list is confirmed through NICS coordination with the Terrorist Screening Center, NICS personnel coordinate with the appropriate FBI field office to gather additional, potentially prohibiting, information, if available. If the FBI field office does not provide any additional disqualifying information, then the transaction proceeds. Currently, under the Brady Handgun Violence Prevention Act of 2003 (Brady Act), FBI field offices are not provided the final status for approved firearms transactions.

In order for the FBI to prohibit a person who appears on the terrorist watch list from possessing a firearm or explosive, without having prohibiting information, current Federal law must be amended. In addition, the Department of Justice will continue to evaluate legislative proposals, and will convey those results to Congress.

COMPREHENSIVE SCHOOL SAFETY PROGRAM

And just one other issue I would like you to work on. I'm very pleased that the President's request includes $150 million for the Comprehensive School Safety Program, which would allow school districts to apply for grants based on the needs of their community, be it security upgrades, school psychologists, counselors, or in some cases armed guards. Are you giving guidance to the district for acceptable uses of these grants? Will the Department prioritize applications for security improvements versus personnel or specific types of personnel? Could you share with us what you have in mind?

Attorney General HOLDER. Yeah. When we met with educators as part of the—I think it was 200 groups or so that we met with during the lead-up to the introduction of the President's proposal, the Vice President and I met with a group of educators and parents, and what came out of that meeting is reflected, I think, in the proposal that we have, which is to give our localities flexibility as to how they would use this money; to put a menu of options in front of them, everything from armed guards to psychologists, counselors, and to give them the ability to decide what is best for that community for those schools.

And so what we tried to do, as I said, is to put together a program that gives guidance in the sense that it lists out a number of options that local communities have, but also is an educational

directive in the sense that we restrict it to the number of things, the options that we are presenting. And so I think we are being flexible while at the same time being responsible.

Mrs. LOWEY. Thank you.

And thank you, Mr. Chairman.

Mr. WOLF. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

EXECUTIVE IMPLEMENTATION OF GUN VIOLENCE INITIATIVES

Mr. Attorney General, you said that you're examining what you could implement through Executive Order. What portions of the defeated Senate proposal do you believe could be implemented by Executive Order?

Attorney General HOLDER. The defeated Senate proposal?

Mr. CULBERSON. Yeah.

Attorney General HOLDER. I'm not sure much of anything can. I would have to look at it.

Mr. CULBERSON. I was trying to understand your statement about you were looking at what you think you could implement by Executive Order. If you could just clarify.

Attorney General HOLDER. There are certain things that the President has asked me to do within 60 days or within 90 days of the date in January that is part of the Executive Orders that he issued. So I'm referring back to those.

Mr. CULBERSON. Okay, referring back to that original list.

CYBER THREATS

Let me ask you about, if I could, a problem that Chairman Wolf has been a leader on from the beginning on, and that's the cyber threat that the country faces. Could you talk to the committee about the role the Department of Justice plays in helping to protect the country and the Federal Government against cyber attacks?

I know that the Department of Justice's Office of Inspector General has noted a number of deficiencies over the past few years in the Department of Justice's Security Operations Center. Could you talk about some of those deficiencies and what you're doing to overcome them to better protect the DOJ from cyber attack?

Attorney General HOLDER. Well, detecting and disrupting these cyber attacks is a priority for the Department. If one looks at the cyber arena, people from off our shores have the ability to perpetrate common frauds, and then beyond that we have dangers to our infrastructure and other national security threats. So we have to deal with these in a variety of ways.

The FBI spends a great amount of time dealing with cyber threats. I have an 8:30 threat meeting every day, and I will say that the majority of the time that we are there, at least one of the components of the things we're talking about during that meeting deals with a cyber issue.

So it is something that we have to continue to evolve in the Department and try to address the issues within the cyber arena because they change. The nature of the threat that we are facing changes. We are a part of the National Cyber Investigative Joint Task Force, and that's a multiagency national effort to deal with

these issues, but it is for us and the Department in the 21st century, a priority area.

Mr. CULBERSON. Thank you.

Mr. FATTAH. If the gentleman would yield for 1 second.

Mr. CULBERSON. Yes.

Mr. FATTAH. The chairman and I had a classified briefing earlier today on cyber threats and intrusions. You have $92 million in this year's request for an additional 50 agents for the FBI?

[Nonverbal response.]

Mr. FATTAH. You know, this is an area that I think the chairman has been the loudest on for many years when maybe some of the rest of us weren't paying as close of attention to. But it's clear from the briefing we had today and other classified briefings we had that this is a massive problem with very clear vulnerabilities for our country. So, you know, this is an area that we want to look at in terms of your request and see whether or not there is even more that we need to be doing in that area.

Thank you.

Mr. CULBERSON. Yield back.

Mr. WOLF. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

And welcome, Attorney General, and thank you once again for the superb job that you're doing.

I just want to make a quick comment of thanks for the work the Department has been doing to crack down on IP theft. The Megaupload case just in particular is one, a very prominent example, was very important. That—that action alone increased by one estimate sales from legitimate sources by 6 to 10 percent, a pretty phenomenal result from one case.

I wanted to raise two issues with you today. One, just to follow on with Mrs. Lowey's comments, I share your disappointment and Representative Lowey's with what happened in the Senate on the background check bill. We've discussed it a lot, and I know you're taking action through the Executive Order to deal with some of the State participation providing mental health records to make a more complete database. That issue has gotten a lot of attention.

MENTAL HEALTH, SUBSTANCE ABUSE AND CRIME

There is a different issue that involves the Federal requirement that not only these mental health records be input into the system, but also evidence of serious substance abuse, and in many respects the substance abuse history has proven a more reliable indicator of when someone who gets a weapon is likely to use it for a violent crime. That is a very knotty issue, a difficult issue, and I think the State compliance with that Federal requirement has been even less than on the mental health side. So I wonder if you could share your thoughts on how we navigate that.

And then a broader issue, which I know you've worked on and is of great concern to the committee, and that is just our ever-burgeoning prison population, populated with people, a lot of people, with mental health problems, a lot of people with substance abuse problems, but the unsustainability of our current trajectory and any thoughts you would like to share on that.

Attorney General HOLDER. Well, I agree with you that with regard to the inclusion of information that deals with people who are drug abusers, that is a knotty problem in the sense that I think that information is a potential indicator of those who might use guns inappropriately, and so this is information that should be included.

But we don't want to do something that would have a negative impact on people seeking treatment for their drug issues, and so we have to try to work a way in which we deal with that problem and find the sweet spot. It is something that we are wrestling with, one of the things that the President asked me to look at over the course of the period of time that he gave me. So that is something that we will be addressing.

PRISON POPULATION

With regard to the question of prison population, I think that is something that is of great concern. If you look at the trajectory, we see increasing numbers of people in Federal prison and in our State prisons as well, and I think we should ask ourselves as a society, are we putting the right people in jail for appropriate amounts of time? Are are we doing the things with incarceration that we want to do, which is obviously to punish, to deter, but also to try to rehabilitate?

There are some fundamental questions I think we have to ask ourselves. We can't jail our way out of some of the problems that we are confronting, which is never to say that certain people need to go to jail and for, you know, long periods of time. I sentenced people to jail as a judge here in Washington, D.C. But I think there are some legitimate questions about the policies that we have had in place for a good number of years, and I think we should ask ourselves whether or not the prison population that we have, which is as high as it is, is an appropriate use of the limited resources that we have.

And so we have tried to put in this budget things that deal with alternatives to incarceration: reentry programs so that people are getting out of prison, have an opportunity to become productive members of society again and decrease their chances of them coming back into the system. It's a whole variety of things that are in our budget request that deal with this issue.

JUSTICE REINVESTMENT

Mr. SCHIFF. One particular one I want to acknowledge and compliment the administration on is Justice Reinvestment, which is a proven data-driven process where many States now are looking at alternative ways of helping rehabilitate those who are released from prison, having remarkable success in reducing recidivism, and then plowing those savings back into those approaches and creating a virtual cycle. And I know your request has gone from in the neighborhood of $8 million to the neighborhood of $80 million, and the potential savings are a factor of many, many times that. So I think that's a great new investment, and we look forward to working with you on it.

Attorney General HOLDER. I think Justice Reinvestment is really something that is an important part of our request, and I think it's

important because the States are doing some very interesting and evidence-based things that I think are proving to be very useful, very productive, and to the extent that we can encourage that and then have other States perhaps adopt those things that work, again looking at what actually works, that the Justice Reinvestment is a real tool in making that occur.

MENTAL HEALTH AND INCARCERATION

Mr. SCHIFF. One final point before I yield back, Mr. Chairman. I think one big category where there is a great room for improvement is in the degree to which we use our prisons as mental health holding facilities. To the degree that we can direct the mentally ill to better treatment, and better treatment facilities costs less, much better for them, much better overall, and that may be a significant contributor to our incarceration costs and moving us in a direction that the criminal justice system wasn't intended to be used for.

Attorney General HOLDER. It's true. If you talk to the sheriffs, they will tell you. The sheriff in Los Angeles County, for instance, will tell you that in terms of numbers, that sometimes these sheriffs are the principal providers or holders of people with mental issues, which is clearly not an appropriate thing.

Mr. SCHIFF. Thank you, Attorney General.

I yield back, Mr. Chairman.

Mr. WOLF. Mr. Bonner.

Mr. BONNER. Mr. Chairman, listening to the questioning today, I was hoping that I could impose upon you for consideration and perhaps even the Attorney General. There's so many issues that we could discuss, we could spend the whole day here. I mean, guns, a lot of that activity has been going on in the Senate. If that legislation were to come to the House, it would be great to have the Attorney General come back perhaps if his schedule permitted, because there is mixed opinion about whether the amendment that was voted down yesterday would have kept the tragedy in Connecticut from taking place.

MARIJUANA

But, again, immigration is a hot topic. I would love to talk to you about BP, the trial in New Orleans. But I'm going to reserve my question just for something that came about as a result of a hearing this committee had last week with the head of the DEA. And not to throw you a curve ball in left field, but in December the President was interviewed by Barbara Walters, and her question is, do you support making pot legal? The President said, I wouldn't go that far. It does not make sense from a prioritization point of view to focus on drug use in States where it is now legal. And since November two States have made marijuana legal, and others have made it legal for medical use. The President said, it's a tough problem, but he's asked the Attorney General to examine it. So that's why I would like to focus, since we've got the Attorney General, we don't have the President.

And I want to go back to the hearing that we had with Mr. Wolf last week with DEA Administrator Leonhart, who said that the Department continues to enforce Federal drug laws regardless of State action, and marijuana continues to be an illegal drug based

on Federal law, and that DEA agents under the jurisdiction of the Department of Justice are continuing to pursue marijuana crimes even though certain States have legalized it.

So with all the concern on both sides about gun violence, the numbers show that 40,000 people last year were killed, died because of drug overdose, drug abuse, compared to 11,000 with guns. Over the last decade 400,000 have been killed as a result of drug abuse, drug overdose; 107,000 with regard to guns.

Under the leadership of Chairman Rogers, you and your Department have worked responsibly with regard to prescription drugs, but you said in response to Mr. Rogers that we can't be hampered by State borders. So I'm going to ask you the same question I asked the DEA Administrator: Is it a problem? We all love the 10th Amendment, but is it a problem that we selectively try to interpret the usage of the 10th Amendment as it relates to an issue that the Federal Government deems illegal and dangerous and is a gateway drug?

During the testimony last week, she was talking about the children who start out with marijuana, and we're not talking about, Mr. Attorney General, someone who is growing something in their backyard. We're talking that the testimony showed last week that many of the drugs, most of the drugs that are coming here are coming into this country through the Mexican cartels, which would have to be a serious issue for the Justice Department and for every mayor and Governor.

So my question to you is since the President referenced you in the interview with Ms. Walters last year, tell us from your perspective as the chief law enforcement officer of this country, is this something the Federal Government should be concerned about? Is there an added burden because of States making their own independent decision? And does it create added challenges for the men and women who work in your Department?

Attorney General HOLDER. Well, we have certainly continued to review the marijuana legalization initiatives that were passed in Washington and in Colorado. We've not announced a decision at this time yet, and we are still in the process of reviewing those initiatives. I mean, we are certainly going to enforce Federal law. That is what we're going to do. Now, it's what we do across the board. Where there are Federal criminal statutes, that is the responsibility of the Department to enforce them. And in making those enforcement decisions, we take into account how we can best use the resources that we have, and we make determinations about where the greatest harm occurs, and where we can have the greatest impact.

When it comes to these marijuana initiatives, I think some of the things that we will have to consider is the impact on children, whether kids are somehow negatively affected by these initiatives; whether or not there is violence connected to the trafficking, the use, the sale of marijuana, the source of it. We don't want to do anything that would enable organized crime, the cartels, to somehow benefit from these initiatives. And then obviously the question of violence more generally, to the extent violence is associated with the sale or use of these drugs. These are all the kinds of considerations that we are taking into account as we try to determine what

our position is going to be with regard to the Washington and Colorado efforts.

Mr. BONNER. Well, correct me if I'm wrong, but marijuana is a Schedule I drug, as is LSD and ecstacy, so maybe it's miscategorized, I don't know. But based not on the research you've done so far or the report you might issue coming forward, based on your judgment as a father of three children—the President's got two children, I've got two kids, a lot of people have children and grandchildren, and I guess it's a personal question now—do you think this is something—if there were a recommendation from the Attorney General to the President of the United States today, would you be in a position to say whether you think the legalization of marijuana by our Nation would be a good thing or bad thing?

Attorney General HOLDER. Well, one of the things I will be sharing with the President are the views that I have with regard to the Washington and Colorado initiatives, and the President, I think, has not said that he was for legalization. I'm not for it either, and certainly when it comes to children. I think it's even recognized in the Washington and Colorado initiatives that there are certain age limits beyond which the use of marijuana would not be appropriate, in the same way that we do with alcohol.

So the decision or the recommendation that we make, perhaps the decision that we make in the Department, will take into account the things that I referenced in my first answer to you: The impact on youth, the whole question of violence, and the question of organized crime. All of these kinds of things go into that determination, and then, again, how we deploy our resources most effectively.

Mr. BONNER. Well, out of interest of time, Mr. Chairman, I'll yield back, but, again, there are so many questions that I think so many of us would love to have a chance to visit with the Attorney General on, and if he did have an opportunity later this year to come back as some of these things move, I know that I would be happy to make myself available.

Thank you.

Attorney General HOLDER. Okay.

Mr. WOLF. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chair. And welcome back.

HATE CRIMES

I have four quick questions, and perhaps the responses could be brief, but in the past I've been very concerned about the FBI's Hate Crime Statistics Act data collection mandate, and we're asking for in addition to—additional categories to that. And you know that the Advisory Policy Board will be meeting later on this year to discuss—to make a recommendation on several new categories. And I know that you have already come out in support of the addition of some of these categories, but I would like to ask you, is there any more the Department of Justice can do to ensure their addition later this year, and specifically the addition of anti-Sikh, anti-Hindu, and anti-Arab hate crimes?

Attorney General HOLDER. I'll try to be as short as I can. We've recommended to the committee that actually has to make the de-

termination, that anti-Sikh, anti-Hindu, and a Middle Eastern—I'm not exactly sure how it was put, but a Middle Eastern category be included in hate crimes determination. So for purposes of accumulating data, we've come out in favor of that.

Mr. HONDA. You know, because I think the reason is that many people do not make those distinctions, and it gets a lot of folks into trouble, so we appreciate following up on that.

CURIOS AND RELICS

One of the interesting things I notice on your Department's FY '14 budget is that you requested removal of several pieces of language around inventories and curios and relics. Could you tell us a little bit more about your thinking on this issue and why it's important in light of the recent events?

Attorney General HOLDER. Well, we think that the language that deals with curios and relics is not appropriate in that you can have these weapons that, though old, can still be used, and can be quite effective in crimes, and can cause great harm. And we think that the restriction that is included there, the prohibition there, is one that simply is inconsistent with the harm that an old weapon can still cause.

VOTING RIGHTS

Mr. HONDA. Okay. I get that. I appreciate that.

In the areas of voter protection, and there have been a lot of Americans who waited inordinate amounts of time in the last election, most of them waiting a long time to exercise their most fundamental rights, and that's the right to vote, and one of the things that was going on was individual States intentionally was trying to limit the amount of days available for early voting or absentee voting, as well as limiting access to polling hours in stations in heavily minority areas like Asian Americans, African Americans, Hispanic Americans and basically every other minority community was really unfairly targeted.

This runs really completely contrary to our Nation's founding principles. Do you—could you tell the subcommittee about what the Department is doing to stop this blatant abuse and how we can be helpful?

Attorney General HOLDER. Well, this whole question of voting rights is something that I have tried to make a priority for the department. We brought a number of suits last year, successful suits against States, Texas, South Carolina, Florida, with regard to either photo ID, or the reduction of hours that people were allowed to try to cast a ballot.

I think it is inconsistent with who we say we are as a people. We should be doing things that encourage people to vote, expand the number of hours, being mindful of the fact that, to the extent that there is the potential for fraud, that we don't do things that make that possibility more real.

But I think that Congress can help by allocating money for grants, to somehow encourage the States to keep the polls open longer, to make registration easier, to do those kinds of things so that we have more people in the process as opposed to fewer. That is not the American way, to do anything other than that. And you

know, we have seen, and it resulted, in the civil rights movement, in the 1965 Voting Rights Act.

We have seen what it means to keep people away from the polls. That was a dark time for this Nation. It is not something we want to go back to.

Mr. HONDA. One of the things that I have noticed is that we have always had it on Tuesday, historically. Is there anything that is by statute or by Constitution that requires it to be on a Tuesday, or is that something that we can look at as modifying this? Newer democracies usually have 2 days, and they usually declare it a nonworkday so that it gives people the ability to get out there and vote. Is there something that I don't understand about this designation of Tuesdays?

Attorney General HOLDER. Well, it is interesting if you look at it, it has a lot to do with the way our society was configured many years ago, an agrarian society, and Tuesday was a great day, I don't know, for market reasons or something along those lines, but we are in a different time, a different era. And I think—some of the things that States are doing with regard to expanding voting ability to weekends makes a lot of sense. People have to work, generally, on Tuesdays. They are not bringing crops from the fields into the place where they perhaps can vote.

The notion of voting on Saturdays, voting on Sundays, Mondays, expanding out, those are all the kinds of things that I think we should be encouraging.

NYPD STOP AND FRISK AND SURVEILLANCE

Mr. HONDA. Thank you, and one last thing. It has been about 2 years since this story was revealed, and it has been more than a year that the DOJ is committed to doing an investigation into the NYPD's actions. I have asked if, you know, there would be some updates on the DOJ's review of the NYPD's actions, and you found, you said that you found that spying was very disturbing, and said that these things are under review by your department. Can you give us an update on the status of the review of the NYPD?

Attorney General HOLDER. Yeah, those items, the stop and frisk policy, and the surveillance issue, those are things that are under review by the Department. There is a lawsuit presently underway, a civil lawsuit that has been filed by a set of plaintiffs that we are still monitoring and gleaning information from. So these two things, stop and frisk, and the surveillance issues are, as I said, matters that are still under review in the department.

Mr. HONDA. It is under review. And it sounds like, it doesn't feel like there is progress, but is it because there is a lawsuit that is pending that you are—you wait and see, or are there other things that are more proactive on your department that can be done or, I mean, contemplated?

Attorney General HOLDER. Well, I think it is a combination of both. I mean, there are certain things, obviously, that the department can do independently, but I think this lawsuit is particularly important as information. There is testimony. Evidence is adduced. We get a sense of the policies that have raised concerns in the minds of many people. So we continue to monitor that and that will

help inform, but not necessarily determine, the action that the department will ultimately take.

GPS TRACKING

Mr. HONDA. One last thing, Mr. Chairman, and then I am—in my district, there was an incident where an FBI agent had placed a monitoring device underneath a young man's car to trace their—the person's movements, and there was no explanation or anything else like that. Is that a practice that is still going on, or is that a practice that has been deemed to be halted because it feels like it is very unconstitutional? I just was curious what the department's mandates or directions on that kind of behavior by agents.

Attorney General HOLDER. Well, that is an investigative technique that is still used by the department. The Supreme Court has said that that constitutes a search, and so we changed our policies so that when that technique is used, and to the extent that we can, warrants are now sought as opposed to simply doing it without the involvement of the courts.

Mr. HONDA. And the warrants are sought prior to the action?

Attorney General HOLDER. Right, yes.

Mr. HONDA. Thank you.

Mr. WOLF. Mr. Rooney.

FORT HOOD

Mr. ROONEY. Thank you, Mr. Chairman. Mr. Attorney General, I wanted to ask you a line of questioning, if I could, based on a letter that was written to your office from our chairman, Mr. Wolf with regard to Major Nidal Hasan and the Fort Hood shootings. It was dated March 15th, 2013. They have not received a response as of yet, I believe, so I wanted to delve into this a little bit if I could.

Specifically, I want to raise a line of—a line from the letter that was from a former colleague of ours, Mr. McHugh, who is now the Secretary of the Army. And he was interviewed in an ABC Nightline report saying, quote, "Awarding Purple Hearts could aversely affect the trial of Major Hasan. To award a Purple Heart, it has to be done by a foreign terrorist element, said McHugh. So to declare a soldier a foreign terrorist, we are told, I am not an attorney, and I don't run the Justice Department, but we were told that would have a profound affect on the ability to conduct the trial."

So this is sort of the basis of where I want to go with my line of questioning. And the issues revolved around workplace violence versus acts of terror, whether or not victims would receive a Purple Heart or not, and why, and how that might taint the trial of Mr. Hasan.

And then, of course, your role in this, because he specifically implies, I believe, in his quote that the Justice Department here had some role, all in the overview of your budget request, and how we move forward.

I just want to preface by saying that I served at Fort Hood. My son was born at Fort Hood on 9-6-2001, 5 days before 9/11, and I am very familiar with the up tempo nature of that post. I went two divisions there, along with three corps. It can be a highly stressful

environment. And I was a young captain there a few years back, and so, for me, it is somewhat personal.

I was also a judge advocate there. I prosecuted cases in the building that Major Hasan is being prosecuted, and I know the prosecutor. I knew the former defense attorney very well, so I just want to try to get to, if we can, a little bit, some clarity on this issue, which I think the victims there certainly deserve.

So my first question is: And if you could keep these answers as much as possible to yes or no, so I can get through as many as possible.

Did DOD officials consult you or members of your department regarding the decision to designate Hasan's attack on military and civilian personnel at Fort Hood as an act of workplace violence?

Attorney General HOLDER. Well, I am going to say this is an answer that is not yes or no, but might help with the line of questioning. I am just not familiar what interaction we have had with the Department of Defense with regard to this issue. I don't know——

Mr. FATTAH. If the witness would yield, this is a gentleman that is being prosecuted by the—by DOD, right, by the Department of Defense, not by the Department of Justice. And John McHugh, just so the record can be clear, is a former Republican Member of the House, who is serving in his second term now in the Obama administration, and the—this is a military procedure in terms of the trial of this gentleman. And I just want to make sure the record is clear, even though, I mean, the gentleman was a great Member and has every right to question the Attorney General on it, but it is not something that the Department of Justice is handling.

Mr. ROONEY. Well, and I appreciate that.

The only reason I bring it up is because Mr. McHugh himself said in this interview that "I am not an attorney and I don't run the Justice Department, but we are told that the Purple Heart award would have a profound effect on the ability to conduct a fair trial."

So the answer by the Secretary of the Army implies that the Justice Department has some involvement here, and that is what I am asking you. So if your answer to that is no, then we certainly can move on.

Attorney General HOLDER. As far as I know, the decision as to award Purple Hearts was not influenced in any way by anything the Justice Department said, but I will look at that, and to the extent that we have had some interaction with the Defense Department, relay that to you.

But I think that what Congressman Fattah has said is correct. This is a military prosecution. It does not involve the Justice Department, and clearly, we are not involved in making Purple Heart determinations. But if we have had some interaction with them, I will share. I am just not aware of it.

[The information follows:]

FORT HOOD INVOLVEMENT

The Department of Justice is finalizing its response to a letter from Representatives McCaul, Wolf, and Carter that addresses the issues raised by Representative Rooney. Consistent with the Department's forthcoming response, on April 18, 2013,

Army Secretary McHugh's office released the following statement: "No Department of Justice official, including the Attorney General, provided written or verbal guidance to Secretary McHugh on how designating Major Hasan as a terrorist would impact the military trial. The decision as to how to charge Major Hasan was made by military prosecutors.

Mr. ROONEY. Okay.

Mr. WOLF. If the gentleman will yield. Mr. Rooney is accurate, though. And I have the letter. I just pulled it out. Mr. McHugh said, "I am not an attorney. I don't run the Justice Department." And there is an inference—I think Mr. Rooney is right—that before they did anything, they went to the Justice Department.

And quite frankly, the administration has treated these people very, very poorly. I mean, some are in the audience here today—very, very poorly.

So the inference is, unless McHugh misspoke, that they did call Justice before they did anything.

I yield back to the gentleman.

Mr. ROONEY. Are you aware of, Mr. Attorney General, what person in the administration made the call to deem that a workplace violence incident, or——

Attorney General HOLDER. No.

Mr. ROONEY. No?

Attorney General HOLDER. I am not aware, no.

Mr. ROONEY. Okay, if I could, I just want to continue on, if all of these questions are going to be no, then I certainly understand, but I want to continue on with the line of questioning.

Can you recall any case in your role as the Attorney General where a case was tried as a workplace violence in which the perpetrator had a prior FBI documented connections to an al-Qaeda leader like Anwar al-Awlaki and then went on to murder 13 people?

Is that something that you have ever seen before as deemed a workplace violence case?

Attorney General HOLDER. I am not familiar with a fact situation like that, no.

Mr. ROONEY. Do you believe that—I assume that you agree that Mr. Anwar al-Awlaki is in fact a terrorist, since we killed him in Yemen.

Attorney General HOLDER. He was a terrorist.

Mr. ROONEY. Right, correct. So that the relationship between al-Awlaki and Mr. Hasan is well documented. We have the Webster Commission Report, which are you familiar with that?

Attorney General HOLDER. Yes.

Mr. ROONEY. Which went into excruciating detail about the relationship and what we knew or what we didn't know, or what we should have known and what we neglected to act on.

Immediately following the Fort Hood attack on members of our military, was any terrorism investigative or prosecutorial authority sought from the Department's National Security Division? In other words, did anybody get with you to, for guidance, or for—to see if you were going to be prosecuting this case?

Attorney General HOLDER. I don't know. We will have to look into it. I just don't know the answer to that question.

Mr. ROONEY. Okay, so you don't know if it was approved or denied?

Attorney General HOLDER. I don't know.

Mr. ROONEY. Okay. And I don't know, again, if you are not—if you are not aware of a lot of this stuff, then you know, what I am about to ask, is one of the things that sort of confused me when I was preparing my line of questioning for today, and the inference by Mr. McHugh that the Justice Department had some role, and that we were worried about tainting the trial, which I get, remembering a comment that you had made in the past about KSM and being brought here, that I don't know if you actually used the term, slam dunk, but it was along those lines that we have every confidence that his conviction will be a foregone conclusion. And I thought that that was a little bit interesting because he had yet to go through trial, and that there could be a taint issue there.

So to worry about there being a taint issue with the Hasan case, and labeling it workplace violence, versus an act of terror, I couldn't real jibe those two, but if you are saying to our committee that you are not aware—that you are not aware of Mr. McHugh saying that there was an interaction between DOD and you on this case, then I guess that is moot.

Attorney General HOLDER. Yeah, I am just not aware about that. Let me just also say that, with regard to KSM, I never said what it is you said, or used the words to that effect.

Mr. ROONEY. Okay, somebody did. I am not—I just remember hearing that, and thinking it was kind of interesting that we were—we were basically patting ourselves on the back that the New York District Court was going to have a conviction no matter what, and this guy was going down, and you know, we hadn't even gone there yet. But that is completely irrelevant to what I am trying to get at here.

Could you explain to me what your department's protocol is now if a member of our military was to send multiple emails to an individual on the terror watch list attempting to financially support a known terrorist? So if we were going through this again now, what is your protocol?

Attorney General HOLDER. Well, if anybody was sending material, or doing things that would support a designated terrorist organization, that would potentially violate the Material Support Statute, a case could be brought.

Mr. ROONEY. Even if it is somebody in the military?

Attorney General HOLDER. Well, I was going to say, the interaction between the Justice Department, and the Defense Department in that regard is something that we have to work out. That is one of the problems we are having now with the military commissions, the ability to bring a material support charge in a military setting is not necessarily something that is clear, that can clearly be done.

That is something that is going to have to work its way through the courts. So how the case would be handled is something that we would probably have to work our way through and determine where it is. But I would think that in the first instance, if a member of the military is doing something that is violative of the law, that in the first instance, those things end up on the military side, as opposed to the civilian side.

Mr. ROONEY. Okay. I want to also make you, bring you back to the Homeland Security Committee, Oversight Subcommittee, that held an investigatory hearing last year that concluded that the FBI's failure or refusal to tell the Army about Nidal Hasan's Al Qaeda connections led to the Fort Hood terror attack.

In the audience today, I just want to recognize our Sergeant Shawn Manning, who still has two of Hasan's bullets in his body, and Sergeant Alonzo Lunsford, who Hasan shot six times, as well as one of the widows of Major Nidal Hasan's acts that day.

To them, I just want to apologize on behalf of the government for failing you. And the President said when he met with you down at Fort Hood, that you would be taken care of.

And whether or not we get to the bottom of this, is this an act of workplace violence or an act of terror and whether or not you earned your Purple Hearts, just like the people that were killed in the Pentagon on 9/11 or not, so that you can be properly treated, is something that I am going to commit myself to. And I know that the chairman will as well, which is why we sent the letter. And letter was not meant as any disrespect, but you are alluded to in the letter, so I have a responsibility, not only to my constituents, but to the people that served on a post that is near and dear to my heart, to try to get to the bottom of it.

With that, Mr. Chairman, I just want to end with one question, and this is completely hypothetical. You might not be able to answer this, but assuming that calling Nidal Hasan a terrorist before the trial would, in fact, taint the trial and make the panel in court martial see him adversely and to go against our judicial principles, so, therefore, we would not—we would not call it an act of terror, we would not entertain giving these guys Purple Hearts, because we are worried about tainting that trial; do you have an opinion if, after the trial, Nidal Hasan is found guilty of these murders and attempted murders, after he is found guilty, do you have an opinion of whether or not we can then label it as an act of terror so that Purple Hearts can be awarded? Do you have an opinion about that?

Attorney General HOLDER. Well, first, let me just say that with regard to the people who you recognized, I want to thank them for their service, and they have my sympathy for the losses that they have had to endure.

With regard to the question that you have put to me, this is something that I think is more properly on the side of the Defense Department. You know, history obviously will judge him after the trial. It depends, I guess, on how the trial turns out. But with regard to the designation, I think we are talking about something that is a technicality, something very technical, that has to do with how the military would make that assessment, as opposed to me as Attorney General on the civilian side.

Mr. ROONEY. Okay, and just, I would appreciate even if you can't answer the questions that the chairman posed to you in this letter, if you could respond in like fashion as you have to the questions that I have proposed. I would just appreciate the answers to those questions as best as you can answer them.

Mr. Chairman, I yield back.

Mr. WOLF. Thank you, I appreciate Mr. Rooney bringing the people. I just found out today, a lady came by, has moved in my district.

Would the people from Fort Hood stand? Stand, please.

Our government has treated them poorly, and what I want to ask you, and this is another thing.

Mr. Attorney General, then why should I write you a letter? I—you should have known this. You are briefing. They are passing you notes left and right on every issue. You would have thought somebody would have told you that somebody who serves in Congress sent you a letter. You have had that letter for a month and a half. And it is an issue of such importance for men and women who have served the country. And so maybe Justice wasn't involved.

What I am going to ask you here, would you send one of your people up next week to sit down with Mr. Rooney and tell him, "we weren't involved. There was no involvement," or on the other hand, "we were involved in it," because you don't seem to know the answer.

Would you send somebody up and commit to send and sit down with Mr. Rooney next week?

Attorney General HOLDER. Well, we will certainly look at the letter, and we will respond to it as quickly as——

Mr. WOLF. Well, but I don't think, but we are never getting responses. Once you get out of here, you are gone. I mean, we may never see you again. There will be no response.

You never respond to a letter. I am saying, would you commit to Mr. Rooney to send someone up, and I see you whispering back there back and forth.

Will you send someone up to meet with Mr. Rooney next week? Yes or no?

Attorney General HOLDER. What I said was that we will respond——

Mr. WOLF. Will you send someone up next week to meet with Mr. Rooney?

Attorney General HOLDER. I want to look at—I need to know better, to better understand.

Mr. WOLF. We don't have enough time.

Mr. Rooney, we are in through next Friday. Can you send someone up to meet with Mr. Rooney to talk to him?

Attorney General HOLDER. You say if there is enough time. I don't know that to be the case. I don't know what it means. I don't know what the nature of this issue is we have to deal with, whether we are going to have to talk to——

Mr. WOLF. Well, that is a——

Attorney General HOLDER. Sir, we will do the best we can to answer the questions here.

Mr. WOLF. I yield to the gentleman.

Mr. FATTAH. Let me just try to put this in perspective.

If I say to someone, well, you know, I am not a member of the Republican party, but however, that does not mean you go to the Republican party and say, well, what do you have to do with this? When John McHugh says, well, you know, I don't know what Jus-

tice would think, it doesn't mean that the Department of Justice had anything to do with it.

Mr. WOLF. I agree.

Mr. FATTAH. So we can't go run off a cliff here on an inference. Let's just start there.

Now, you have the commander in chief, who is in a military chain of command, and you have got a military trial going on. The gentleman, Mr. Rooney, was a JAG officer. He knows that the commander in chief, the President of the United States, cannot predisclose a view on the trial. That is, to say it was a terrorist act while you have a military tribunal going on. That would be improper.

You have a trial going on, having to do with this man. I think DOD is completely wrong. It may have taken place at a workplace, but obviously, this gentleman was involved in a terrorist act. But this is a military trial. We are talking about the civilian Department of Justice. We are taking the inference from a former Republican Member of Congress, who any one of us would call up and say, what did you mean? And then we dragged the Attorney General in here and demand that he respond to a set of questions about something he has no involvement with as far as he knows. Right?

Mr. WOLF. Right——

Mr. FATTAH. That, I think, does a disservice in this matter. We should seriously pursue it with the people who made the decision. The DOD made this decision. They may have made it for very good reasons; that is, to further the effective prosecution of the gentleman who did this, number one. And in terms of other matters that might have to come in sequence to a final decision in the court, it may be the appropriate way to proceed. Even if emotions are high about the matter, we have a government of law. So we have to proceed under some rule of law.

So I appreciate what everything that has been said, but there is no reason to believe that when John McHugh made this very interesting statement, that he was actually saying that the Department of Justice had some actual involvement.

Mr. ROONEY. Will the gentleman yield?

Mr. FATTAH. I will.

Mr. ROONEY. That was exactly the line of questioning, because there was an inference made, and maybe you are right. Maybe I should have just called McHugh directly, but when that inference was made, and we were going to have the Attorney General testify here today, I think that it is important that if there was coordination between DOD and the Justice Department on how this case was going to move forward and how it was going to be handled, that it would be fair to ask the Attorney General, in what capacity is that going on? Now, he has answered those questions, but I think the people standing in the back of the room deserve to at least try to get to the bottom of it. And if you don't have the answers to these questions, you don't have the answer to these questions.

And it is put more appropriately in DOD, then we will go there next. But the Secretary of the Army made the comment. I thought it was fair to ask. There is a guy in the back of the room that has

a bullet that needs to be removed from his body but can't, because under the benefits that he has, it is not termed to be a combat-related injury. So he has to wait with a bullet in his body until we figure out what the hell we are doing in here.

And if you don't have the answers, you don't have the answers, and that's fine. So I am not trying to be accusatory of anything. I am just trying to figure out why we have the issue of workplace violence versus an act of terror, so that these guys can get the benefits that they deserve, and if after Hasan, assuming, is found guilty, then can it be determined that it was an act of terror so that that could rightfully get their Purple Hearts, just like the people at the——

Mr. FATTAH. If the gentleman would yield?

Mr. ROONEY. Yes, sir.

Mr. FATTAH. I would be glad to work with you and get the Secretary of the Army down here to meet with you so we can get some answers.

Mr. ROONEY. That would be fabulous.

Mr. WOLF. But I have got to go back to this, though.

I agree with my friend from Philadelphia, Mr. Fattah.

But you can come up and say whatever the fact is. And the Department of Justice investigated this case. Your department investigated this case. The Justice Department investigated this case. It was not the Secretary of the Army. You and your department investigated it.

So what I am asking you, Mr. Attorney General, out of respect for these men and women, 13 that gave their life, who paid the ultimate price—this young lady here, I found out today, what is your name, ma'am?

VOICE. Angela.

Mr. WOLF. Angela, and she just moved to Manassas in my congressional district. I will join him, and I will aggressively work—they deserve this. So if you were never involved, and no one there was, come up next week and say, nobody here was. But your department investigated the case. I am asking you on the record, on behalf of these people who served this country, 13 who gave their life, will you send someone up from the Justice Department next week, and Mr. Fattah should be there, and I will come if Mr. Rooney wants me to come, but to say what the involvement was, whether Justice was or was not involved. Yes or no.

Attorney General HOLDER. We will do the best we can. But I am saying to you, you are asking me to make a pledge.

Mr. WOLF. Just to come up and meet with them.

Attorney General HOLDER. What would be the purpose of coming up here if I was not in a position to share information? I am saying we need to acquire information. That is what I am saying. And so I will say I pledge to answer the questions in that letter as best we can, as quickly as we can, if we can.

Mr. WOLF. But Mr.——

Attorney General HOLDER. You know, we have a lot of——

Mr. WOLF. Yeah. The very fact that you will not send someone up to meet with Mr. Rooney, who is a member of the committee, who has served in the military, who has been down to Fort Hood, who is advocating for the families——

Attorney General HOLDER. No, what I said, I wouldn't commit to doing it by next week because I don't know if we——

Mr. WOLF. How about in 2 weeks?

Attorney General HOLDER. I will pledge to you that we will supply the information, that we will——

Mr. WOLF. Three weeks.

Attorney General HOLDER [continuing]. Come up talk to you, answer the letters, the information.

Mr. WOLF. By?

Attorney General HOLDER. As soon as we can.

Mr. WOLF. By the end of May?

Attorney General HOLDER. As soon as we can. I am not going to do any better than that. That is the best that I can do for you.

Mr. WOLF. I will tell you, if the American people are watching this and they know their taxpayer dollars are going to the Justice Department that can't send someone up, when I looked at the IG investigation, the activity that took place with Perez and some of those activities, and you can't send someone up from the Department? We will send somebody down to pick them up, to drive them up here.

Mr. SCHIFF. Will the gentleman yield just a minute?

Mr. WOLF. I will not yield on this.

And I will not yield because I found out this lady lives in my congressional district, and they deserve this. If you can't do it by the end of May, it is a really disgrace for the country.

I will now yield.

Mr. SCHIFF. I thank the gentleman for yielding. Certainly, the Attorney General has said that he will look into this, and he will get back expeditiously. He doesn't—he has represented to us it will take time for him to get the information to get an answer. Now, he could come here next week and say, I haven't had time to get the information you need; we would have to coordinate with DOD. There would be little point in occupying the Attorney General in the midst—in the wake of what is going on in Boston and everything else right now and having him come back on an empty errand.

I would rather that we had the feedback of the department when they can come back and actually give us a substantive answer. He said he will do that as soon as he can, and he is a man of his word, and I think that we should accept that.

And I yield back.

Mr. CULBERSON. Would the gentleman yield?

Mr. SCHIFF. I yield.

Mr. CULBERSON. Mr. Attorney General, could you send out a request to your department, and ask, did anyone in the Department of Justice consult with the Department of Defense?

Attorney General HOLDER. You can rest assured that leaving here today, and probably on the ride back to the Justice Department at Ninth and Pennsylvania Avenues, I will be asking that very question.

Mr. CULBERSON. And you will have an answer?

Attorney General HOLDER. And how long it will take to get all the answers to that, I don't know. That is the only thing I was saying. I don't want to put myself in a position where, as Mr. Schiff

indicated, that I come up here and have an inability to answer. I probably——

Mr. CULBERSON. Sure.

Attorney General HOLDER. I don't want to pledge something that I don't have the ability to confirm right now. I don't want to put myself and the department——

Mr. CULBERSON. When you ask questions of your employees, they generally answer pretty quickly.

Attorney General HOLDER. Generally. That doesn't mean all the time, though.

Mr. CULBERSON. So, certainly by the end of May, you would know the answer to that question?

Attorney General HOLDER. Probably, yes.

Mr. CULBERSON. And you could meet with Mr. Wolf and Mr. Rooney.

Attorney General HOLDER. I think we will be in a position to answer this question probably very quickly. The only question was time. That is all I was saying.

Mr. CULBERSON. Would you please give the chairman a commitment?

Mr. WOLF. Well, I am going to—the answer is yes, and I appreciate that, and I am sure that Mr. Rooney does. And we will work it out. And Mr. Rooney, with your permission, I think Mr. Fattah should, both of us will come.

Mr. ROONEY. Absolutely.

Thank you, Mr. Chairman.

Mr. WOLF. Thank you.

Mr. Harris—no, Mr. Serrano, excuse me.

Mr. SERRANO. Thank you, Mr. Chairman.

It is not easy to go back to regular questions after this discussion, but I think the gentleman from Florida, Mr. Rooney, has legitimate, heartfelt concerns.

But like Mr. Schiff, I also heard, in spite of the emotions involved, and rightfully so, I heard a determination by a lot of people to get to the bottom of this and to resolve it. And I heard it from the ranking member. I heard it from the chairman. I heard from it Mr. Rooney. I heard it from the Attorney General, and I think it will happen. And whether it is a matter of picking a date or a time, it takes a little longer than that, then it has to be. But I don't think it would just go undealt with, if you will, for the next few days, so, or months. So I am satisfied with that.

So, Attorney General, just, first of all, when we say that our prayers go out to the people of Boston, and that is true and correct, we want you to know that our prayers and our thoughts are always with the law enforcement also, and the people that you always see and the people that work with this on a daily basis, because how quickly they move is important, but they are also in danger in many ways. So it is a global desire for peace and for understanding, and we commend you for your work and for the work of the department.

NYPD STOP AND FRISK

Just picking up very briefly before I make a statement that I want to make to you, on the issue of the stop and frisk policy, you

said that there is a lawsuit going on, and you want to wait on that. But there are folks in New York and other places who are looking for the Justice Department to say something about the stop and frisk. So what is the purpose of waiting after the trial? The trial itself may make the statement. So at what point is it the role of the Justice Department to make a statement on this issue?

Attorney General HOLDER. I am not saying that what we have to do is dependent on what happens during the course of that trial or the result of that trial. It just seems to me that there are data points. There is information that comes out of the trial that is, as I followed, in the newspapers and talking to people about it, there is information that comes out that is useful and will help us in making our determinations as to what our ultimate action will be.

But what we do and the obligations that we have are independent of what happens in that trial.

Mr. SERRANO. Thank you.

PILOT PROGRAM FOR CHILDREN IN IMMIGRATION REVIEW

Just very briefly, also, we understand that there is a long overdue pilot program for immigration review which deals with the possibility of helping children who are in the system, and as we deal with comprehensive immigration reform, there are a lot of pieces there that folks will get to know, and one of the things that happens is what happens to people that are in the system already, deportation, children that are being left behind, parents that are being deported.

What do you see as the future and the resources available for that kind of a program to protect children as we move to protect other children, such as the DREAM Act children are already protected?

Attorney General HOLDER. Yeah, I want to make sure I have the numbers here, but I think that is obviously something that we need to do. We tried, while I have been Attorney General, to look at situations where people find themselves in the immigration system and to extend, to the extent that we can, the right to counsel, so that people in what are really kind of potentially life-changing decisions are adequately represented.

We have a $4 million enhancement that we think will assist us in making sure that children do not face these kinds of proceedings alone. And so I think the concern that you have raised is a very legitimate one. We have focused a lot on children's issues since I have been Attorney General. And as we are looking at reforming, redoing our immigration system, I think we really have to look at in a way that we have not before who comes into the system and how they are being treated, and adequate representation is, I think, the cornerstone to a good system.

Mr. SERRANO. Right. Thank you.

PUERTO RICO VOTING AND PLEBISCITE

Mr. Attorney General, I want to make basically a statement and if you wish to comment on it, I would appreciate it. But I understand if you can't comment at this point. You know, in 1898, Puerto Rico became part, if you will, of the United States. In 1917, Puerto Ricans were made American citizens. In 1990, for what it is worth,

I became a Member of Congress. And since that time and prior to that time, when I knew you——

Mr. FATTAH. Are you equating each of those things?

Mr. SERRANO. I said, for what it is worth. So I am not equating it. But there was a direct result, obviously, of all of those things happening. And all the time that you have been Attorney General, even before that, you know of my concern, and so we just wanted to thank the department for including $2.5 million in funding to conduct voter education and a plebiscite to help resolve Puerto Rico's future relationship with the United States.

This funding is an important step to me and to millions of Puerto Ricans in Puerto Rico and in the 50 States in defining a process that will allow Puerto Rico to truly determine the constitutional relationship that they want to have with the United States. This language is an important response to a ballot question that was on the ballot last November in Puerto Rico, whether the people of Puerto Rico wanted to remain in their current status or to change to something different.

Puerto Rican people on that day clearly voted for change. This funding is the logical next step in that process. I don't know how the department plans to implement its responsibilities as it moves forward through this process, but please know that you have a supporter on this initiative in this committee. I have already spoken to the chairman of the full committee, to the chairman of the subcommittee, and I think after 115 years, it is time to resolve the political status of Puerto Rico. It is of great interest, as I said to the 4 million who live on the island, and to the 4-plus million who live throughout the 50 States. And if you care to comment on what the process will be and what you hope to accomplish at the end, I appreciate it.

Attorney General HOLDER. Well, under the budget request of I guess $2.5 million the responsibility for devising the expenditure plans is going to rest, as it should, with the State election commission. Our role is limited to reviewing the plan and determining whether it is compatible with the Constitution and laws of the United States.

But the administration is committed to the principle that political status is a matter of self-determination. And the President's budget proposal reflects his commitment to work with Congress to provide a mechanism for the people of Puerto Rico to decide their own fate. That is our view.

Mr. SERRANO. Well, we thank you. We thank you for that comment, Mr. Attorney General, and we hope that we can work together as a Nation, if you will, to resolve this issue.

And once again, I thank you for your service.

Thank you, Mr. Chairman.

Mr. WOLF. Dr. Harris.

Mr. HARRIS. Thank you very much.

THOMAS PEREZ

And thank you for appearing this afternoon. I have just two brief areas of questioning, and then I'm going to dive a little bit deeper into the medical marijuana issue. First, I wasn't going to ask this one until I read the *Wall Street Journal* this morning where the

department is the subject of an article and the lead editorial discussing one of your officials, Mr. Perez, and his actions at the department.

And I won't get into the whole business about Magner, but I'm going to ask you, do you agree that the quid pro quo deal that was arranged in that is an appropriate ethical way to deal with those cases, and you know, did you have involvement in the decision of the appropriateness of that quid pro quo deal?

Attorney General HOLDER. Well, the use of the term, quid pro quo—I'm assuming you used that in a neutral way. I don't think anything in——

Mr. HARRIS. Sure, no, in a purely technical way, and I think there is fair evidence that the decision was made to drop the two, the support for the two other cases, in return for the dropped prosecution, for the dropped Magner involvement. I mean, I think there is agreement that that was done, and my understanding is Ethics was consulted, and do you agree with that——

Attorney General HOLDER. Well, I think that——

Mr. HARRIS [continuing]. That deal?

Attorney General HOLDER. That the actions that the United States took in that case were appropriate and in the best interests of the people, the taxpayers of our country, the citizens of this country. And as you point out, I think something very important, ethics people were contacted. I think the Office of the Professional Responsibility, or OPR, was actually contacted as well. I didn't see the hearing today, but I'm sure that the Secretary of Labor designee indicated the same.

Mr. HARRIS. Sure. Let me just ask, and just to follow up just very briefly on that, because you know, although everything was appropriate, it appears there may have been actions to make it less than obvious to the observer that this is what was going on with regard to, you know, emails that said, well, don't connect those two in an official communication. And then what was more troubling, and my specific question to you is, is this question about use of a personal email system to communicate with the lead attorney in St. Paul by Mr. Perez?

Because you know, we have had the EPA administrator, you know, use a dog's name for an email system that—and I was the chairman of the subcommittee that was looking into some of these issues. And we didn't know to subpoena the dog's email, I mean, so we weren't getting answers back.

It appears that a personal email account was used for communication between Mr. Perez and the attorney in St. Paul. But the interesting thing is that there was a subpoena issued by the Oversight Committee, I understand, and the Justice Department's spokesman's quote was, "we have been cooperating and will continue to cooperate with legitimate Oversight requests," because Mr. Perez resisted agreeing with it. In your opinion, is that a legitimate Oversight request, a subpoena for personal emails when it has come to the attention that the personal email system may have been used to avoid, in this case, potentially, to avoid the obtaining of records under Federal law?

Attorney General HOLDER. The reason I leaned back was I wanted to make sure that what I'm about to say is correct. But the rel-

evant material that was contained on Mr. Perez's personal email account was actually provided so that the information can be examined, can be reviewed and determinations made about that.

Mr. HARRIS. So your feeling is that the subpoena was not a legitimate Oversight request; the subpoena that the Oversight Committee feels was not complied with?

Attorney General HOLDER. I'm having——

Mr. FATTAH. He said the information was complied with. It was provided. The personal email information was provided. That is the witness' testimony.

Mr. HARRIS. The—then you—you claimed that what was reported today was incorrect, that Mr. Perez is not complying with that request? You are—you are saying he did comply with the request, and you believe that is appropriate to comply with that request.

Attorney General HOLDER. It's my understanding that the personal email information was provided yesterday.

Mr. HARRIS. Was provided yesterday, okay. Thank you very much. Let's move on.

Attorney General HOLDER. That's my understanding.

NICS SYSTEM

Mr. HARRIS. Great. Okay, and thank you. I appreciate. I appreciate that answer. Let's talk about the NICS system because, you know, I will—I'm going to follow on Mr. Schiff's—he is still there, okay, follow-up a little bit with what he brought up. Because, you know, before we expand the system, and I know the President used very strong language. I mean, he used the word lie, which I—you know, you can disagree with someone's, you know, positions, and someone's advocacy, but using the word lie, I'm a little worried about because some of the things that were said about the NICS system I have said. So I'm going to just delve a little bit into it.

Before we expand the system, in general, I would always like to ask the question, is the current program effective, and is it enforced? I'm going to very briefly deal with these two.

In terms of effectiveness, you are aware in the State of Maryland, the last figures I have are from 2011—I will ask actually to get the most updated figures for the State of Maryland. There are only 61 records in the NICS system; 5 felons, and 5 felons, and 56 people with mental health. So there are only 61 people in the whole State of Maryland who can be rejected under a NICS inquiry in 2011. So that means a person, and believe me, I have been in the prisons in Maryland; we have more than five felons. That means that only 61 people will be denied, going into a store today, picking up a military rifle off the rack, standard issues, World War II military rifle off the rack, call the NICS background check and be denied, because there are only 61 records in the whole system.

Is that an effective system? Do you really think the people of Maryland, you know, that we should be just expanding a system, which is—and as Mr. Schiff brought up, and you probably realize, 33 States have no entries for drug abuse disqualification; zero entries for drug abuse. Many States, zero entries for mental health disqualifications, which really was the only thing that would have prevented some of these tragedies, and they are tragedies.

But what I'm getting at has to do with appropriations. We have spent hundreds of millions of dollars on the NARIP and NICS programs, hundreds of millions of dollars and grants going to States to get this data into the system, and actually, I think by your testimony, I couldn't draw it out in the written testimony, it appears you may have actually asked for more money than that next year.

We have spent hundreds of millions of dollars. We don't have a system where States are reporting things. We are going to present to the American people this hope that, oh, my gosh, we just expanded, make it universal. You know, the world will be great, but in fact, the system is full of holes. That has a lot of flaws. So can you address that? When you come in those programs, all I'm going to ask you is, please address those glaring problems, and make the States follow up.

Maryland has taken $10 million of that money. We report 61 cases; $10 million over the past 17 years to report 61 cases. I could get more cases reported walking through Jessup high security—the Jessup Prison and just taking the names of the felons who are in there, I could get more in 1 day.

But let me talk about enforcement, because, Mr. Attorney General, in the year 2010, the last year that was—we have extensive records for, 76,000 denials under NICS, 76,000. And you know these figures; 34,000 were felons; 13,000 fugitives. There were 13 convictions; 62 were referred for charges by ATF; 62 out of 76,000 denials. Okay, and a denial means someone came in and claimed they could buy a firearm, but they really couldn't and therefore committing a Federal crime doing it. Sixty-two charges referred, 13 convictions, 8 in Indiana.

So you probably have some rogue prosecutors in Indiana who didn't get the feeling from the department that he is not supposed to prosecute these cases. The IG from the department testified in front of the committee, his impression is, that it is just low priority in the department. U.S. attorneys just don't prosecute people who violate the background check law.

Please tell me, please tell me that's not coming from the department, that you want to prosecute every one of those 13,000 fugitives who had the nerve to go and attempt to buy a gun as a fugitive from justice, got turned down, and were never prosecuted. Tell me that is not the official department policy.

Attorney General HOLDER. All right. Well, you put a lot into that question. Since the system started, 2 million people have been turned away who tried to buy a gun and came into conflict with the NICS system. The system, I think, certainly should have been expanded in that Senate vote that was taken yesterday. And the system also needs to be made better, which is one of the reasons why we have in our budget request money so that we could find ways for the system to become more inclusive and have more information in it.

There are certainly places where the amount of information provided by the States is inadequate. And we need to take steps to try to remedy that situation. There is no question I think that the system as it is designed technically works. And the question I had for the opponents of that is, if you think it is a system that works, okay—it is an imperfect system; it needs to be better—why would

you then not expand it to gun shows and to people who buy guns over the Internet? Why would you not do that? Why would you not?

And that, for me, is a question that has never really been adequately answered. One-seventh of all of the prosecutions that we bring in the Justice Department are gun prosecutions. We brought, I think, a total of 85,000 cases last year. I think it was the last fiscal year. There were 83,000 denials, I believe last year. We have to be judicious in how we use our resources. We can't prosecute every person who is denied a gun. We don't have the resources; 83,000 denials, 85,000 cases in total.

So we have to make the determinations and what we try to do is focus on those people who are the most dangerous people, who, if they did get a weapon inappropriately, are most likely to do something bad, harmful with it.

Mr. HARRIS. So is your testimony that in the year 2010, there were only, because there are only 62 charges referred, there were only 62 people that were dangerous enough if they got a weapon, that you felt they should have been prosecuted? Your department, because your department makes all of these determinations of referring charges. All is in your department. There were only 62 dangerous enough? Because, see, the allegations that we saved 2 million, you know, 2 million. We kept the guns out of the hands of 2 million dangerous people. But the fact is, that we denied 76,000, but you are going to have to tell me, did we only refer 62 because they were the only dangerous ones? Or did refer 62 because it is just not a priority? Because your testimony was, we are going to take—we are going to refer the ones that are dangerous. Only 62 in the year?

That's not a background check system that works if only 62 dangerous people were denied the guns.

Attorney General HOLDER. Well, look at it, there are a couple of things you have to understand here. The system does work. In fact, those people did not get guns. All right, so that is part one of the question.

Mr. HARRIS. But Mr. Attorney General——

Mr. FATTAH. Will you let the gentleman answer the question, please?

Attorney General HOLDER. Now, part two, I think what you are talking about, you know, I think we ought to agree on that, that the system is effective in the sense with what I call part one now: People who shouldn't get guns don't get them.

Now part two, about what we should do with those people who try to get guns and then are not prosecuted, yeah, the number perhaps ought to be a little higher. I don't know. We have to look at, you know, if you have the number of 62, and you have 76,000, I'm not sure that the number is what you used. That seems like a glaring difference. But you have to examine those cases and understand, were they paper violations? What was the nature of the problem? Not everybody who was denied a gun was, in fact, dangerous. There are a whole bunch of reasons why people can be denied——

Mr. HARRIS. And that's exactly my point. That we say, you know, we kept the guns out of the hands of 2 million people. They were not all that dangerous because again, you only prosecuted 62. But

I want to move on because I do want to deal with marijuana for a little bit.

Attorney General HOLDER [continuing]. Were a host of people who, if they had gotten guns, undoubtedly would have done things that were harmful to their fellow citizens.

Mr. HARRIS. But not bad enough to prosecute.

MARIJUANA

So let me just move on, because the medical marijuana, to me—look, I'm a physician and as I tell people, there is only one Federal license I have held for 30 years: That's my DEA license, because the Federal Government has deemed, under the Controlled Substances Act, that is so important to control that for the health of people in the United States, that we are actually going to—we are going to create the DEA, and we are going to enforce those laws.

So we have the administrator in, and you heard the questioning earlier. The administrator was pretty clear that there is evidence that drugs are dangerous; that especially for children, they lead to actually permanent changes in IQ. They led to permanent change in health, potentially augmenting mental illness, clearly increased accidents and injuries. They are dangerous.

And you know, and you did indicate that the President did not say that he was for legalizing marijuana. But more importantly, the President didn't say he was against it. So here you have the DEA under schedule with the Schedule I drug, no medical use, clearly illegal, and the President not taking a position against what happened in Washington and happened in Colorado.

And my specific question is, is it because of the Supremacy Clause in the Constitution and the ability to preempt it? It is pretty clear from some of the case law that, you know, medical, you couldn't overturn local laws and State laws under medical marijuana, but we have crossed a threshold now. Washington and Colorado crossed a threshold, a threshold that actually was a pretty—that appears, perhaps pretty clear in a couple of the cases, and a couple of the rulings, that there is—there is a possibility to go in, if we felt, and the Justice Department agreed, that marijuana is dangerous, and it deserves a Schedule I classification, that we could, your department could choose to overturn those laws on the—under the obstacle element of the conflict preemption, they could choose to attempt to overturn and send a clear message to the States, we are going to draw the line at medical marijuana. And maybe there are some cases where, you know, we are just not going to go there, but we are going to send a clear message to America's youth that marijuana is not a safe drug. It is illegal, and it is going to be dealt with under the Controlled Substance Act, and we are going to send that national message.

Is that possible? Is that among the realm of possibilities under consideration that the Justice Department could draw that line and send that clear message? Or are we going to have the message a fairly—I guess, you know, a message is just not a clear message to the American kids. I mean, you say, you know, well, I don't know—I don't know if it is bad. I don't know if I'm against it.

That is not a clear message. I mean, look, I have five kids. I have you, plus the President. Add them all together; I have got as many

as you combined. Kids need clear messages, and I'm afraid we are not sending them one. Would that send a clear message? Is that something that you would consider, taking the two States to court and saying, we are going to ask for a ruling in a Federal Court on whether we preempt State law?

Attorney General HOLDER. Well, as I indicated, that is something that we have under review, and there are a number of factors that I went through before that we have to consider in making that determination.

Mr. HARRIS. And what factor, could you be a little more specific because, you know, we have, you know, CRS has looked at this in at least two reports, and it has been 6 months since November has occurred. These programs are gearing up in those two States.

I mean, do you agree with me that an argument could be made for preemption, again, under the—for conflict preemption under the obstacle element, that a line was crossed and this is now—those States are clearly in contradistinction to what—the intention of the CSA; could that case be made?

Attorney General HOLDER. The case could be made with regard, to as least part of the statutes. I mean, these are the things that we have to take into consideration: What kind of case could we bring, the strength of that case, would—our ability to try to preempt apply to the totality of those statutes? Those are all the kinds of things that have to go into the determination that we will ultimately make.

Mr. HARRIS. And who is going to make that determination?

Attorney General HOLDER. I will be making that determination, I believe.

Mr. HARRIS. And the time frame of that?

Attorney General HOLDER. We will do it——

Mr. HARRIS. Because children are dying from drugs. It is a scourge. And as the administrator made clear. Marijuana is a gateway drug. Its use in teenagers is dangerous, and we are sending a very mixed message. So can you give me an idea, and I'm not going to rehash the timeline argument that went on before.

Can you give me a general idea of when that decision is going to be made?

Attorney General HOLDER. Well, let me first say this: When it comes to protecting children, and making sure that children don't die when it comes to drug use or anything else, I am really proud of what this Department of Justice has done over the last 4 and a half years. We have put front and center the welfare of our children. It has been something I have been personally committed to.

And so the decision that we make will be consistent with the policies that we have put in place. With regard to the welfare of our children, there will be no tension in that regard. I'm confident of that.

Mr. HARRIS. I didn't hear—the answer to my question is when is that—what's the time frame for that decision about what will be done about the Federal preemption question over Washington and Colorado's actions that are in pretty clear contradiction to the CSA?

Attorney General HOLDER. That we're going to do that, make that decision as quickly as we can.

Mr. HARRIS. Can you be any more specific than that?

Attorney General HOLDER. No.

Mr. HARRIS. Fall, winter?

Attorney General HOLDER. No.

Mr. HARRIS. No. Are you—do you plan—since the answer is no to that, then I'm just going to ask, Mr. Chairman, just for another minute, because then I have to ask what are your plans to enforce the laws in those States while you're deciding whether or not to actually go to court and strike down the law under Federal preemption? What is your—to enforce—I'm sorry, not the laws in those States, the CSA in those States?

Attorney General HOLDER. Our enforcement efforts remain the same as they always have been, their policy guidance, the policy guidance that we have given the U.S. attorneys from two Deputy Attorney Generals who served under me with regard to how to use Justice Department resources for these cases.

Mr. HARRIS. You know, Mr. Attorney General, you're referring to the Ogden and Cole memorandums?

Attorney General HOLDER. Yes.

Mr. HARRIS. You know they're referring to medical marijuana; you are aware of that?

Attorney General HOLDER. They refer to——

Mr. HARRIS. I'm not talking about medical marijuana. I'm talking about the——

Mr. FATTAH. Can you let the gentleman answer the question, please?

Attorney General HOLDER. They refer to medical marijuana, but you can glean from those memoranda what the Justice Department policy is with regards to how resources are to be used in this field. There are things that are more generic that go beyond the parameters of the medical marijuana guidance. You can glean from those memos. If you read them, it's pretty clear.

Mr. HARRIS. And what about the officials who now, under the question of authorizing activity instead of just approving activity, if those statutes are found to obtain authorization, I mean, do you intend to pursue action against the officials who authorized it? Because those—because that was not covered in those memoranda.

Attorney General HOLDER. These are determinations—again, yes, we're looking at a new set of initiatives, statutes that have been passed by these two States, and those determinations have yet to be made by us, and we will do that, as I said, as quickly as we can.

Mr. HARRIS. Okay. Thank you very much, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Harris.

Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman. I appreciate the Member Dr. Harris's participation. I think he has been at every hearing. And I enjoyed the fact that he was concerned about the President's language on yesterday in relationship to lying. He thought that was exceptional language. Maybe he wasn't on the floor of the House when we had a Member of the Congress on the Republican side of the aisle accuse the President of lying during a State of the Union Address. Because these sensitivities seem to arise in some kind of selective—maybe a selective amnesia, you know, where

we're concerned about it in one instance, but not in another. If we want civility, we have to practice it.

NICS SYSTEM

Now, on the NICS system, I want to make the point that since the President's Executive Orders and the Department's efforts, over 2½ million new names have been added just in recent weeks to this system; in my own State, 600,000 names that have been withheld. These are people with mental health records that should have been in the system, but the Republican Governor in our State for whatever reason wasn't compliant, but now has decided to turn these over.

And I think it's important to show that progress is being made to get names into the system, and when you have 600,000 people who by law shouldn't be able to buy a gun, having them in a system that would prevent them from buying a gun might be useful.

But I do want to deal with another part of Dr. Harris' question. He seems to suggest that every time someone is denied, they've committed a crime, and they should be prosecuted, and I don't believe the facts bear that out; that is, that if I've been involuntarily sent to a mental health institution, and I'm sure many of my constituents think some days I should be, that doesn't mean if I go to buy a gun and I'm denied that I've committed a crime. The prohibition is against the gun seller from selling to a person who is in a restricted category; is that correct?

Attorney General HOLDER. Well, I mean, there are a number of ways——

Mr. FATTAH. There are categories that are different, but in the mental health category.

Attorney General HOLDER. I mean, there are a number of ways that can be viewed. And even for those people who actually technically commit, technically—and, it can be in a nondangerous way—commit a crime, one has to ask, how are we going to use the resources that we have? As I said, 83,000 denials, a total of 85,000 prosecutions in the last fiscal year, I believe. We can't do all those, we have to make determinations, which is not to say that the concern that Dr. Harris has raised is not inappropriate about the number of prosecutions, and that is something——

Mr. FATTAH. No, I think he is entirely appropriate when you're talking about a domestic violence perpetrator who is now going to buy a gun, and that information should be passed along to local authorities immediately, because they may not stop at a Federal licensed gun dealer in their pursuit of this gun, and we may have some sense of what the outcome may be if they're not stopped in that regard.

So I think that more can be done. One of the President's Executive Orders is to have more done in that regard.

Attorney General HOLDER. One of the things that we asked for was a Federal trafficking statute for people who are going and buying guns, using with the intention of getting them and transmitting them to somebody who inappropriately gets them or illegally should not possess them. That apparently is not at least as I understand it, going to happen as well.

Mr. FATTAH. Well, it's unfortunate, because there is bipartisan support, in the House at least, for a trafficking law, and we should do something about it, but unfortunately our parochial process doesn't seem to be able to arrive at a consensus yet that we want to protect the public from people who shouldn't have guns. They say, well, it's not the gun. So the background check is to police the people, right? But the people who are always saying we need to make sure the wrong people don't get guns are opposed to the background checks.

YOUTH MENTORING

But I don't want to get hung up on that. I want to say something positive as I conclude, because I promised the chairman I would conclude quickly, and I know that you have to depart. I want to thank you for your leadership in the youth-mentoring effort in our Nation in support of the Boys and Girls Clubs of America, the YMCAs, I could list all of the groups, but they have gotten a great deal of support and leadership from you.

I think there is much more that we need to do as a Nation. The White House has indicated through one of its statistics that there are at least 10 million more young people out there who need to be connected to a legitimate mentoring effort so we can steer them in the right direction, and that's the most important thing I think we can do as a country.

I think it was DuBois who once said, he said, you know, the minute there is a crime committed in the community, the community should turn its attention away from punishing the criminal to making sure that other young people don't follow in that path. And I think that we have missed this point as a country that we have spent so much focus on those who—on the planes that are crashing rather than the ones that we want to land. And we need to have some balance, and I appreciate the leadership of your Department.

I thank the chairman for his diligence. He is the only chairman on the Hill that doesn't use a time clock, so Members get a chance to get to their point, and I appreciate it. Thank you, Chairman.

Mr. WOLF. Thank you, Mr. Fattah.

CONCLUSION

I have 70–91 questions. I'm not going to ask them, because, out of respect, they told me you had to leave at 4:15. I was prepared to stay here until 6:30 at night. What I would ask, and I had asked for some time, that you answer these questions in writing in—how long?

Attorney General HOLDER. The 91 questions?

Mr. WOLF. Yeah.

Attorney General HOLDER. Again, I don't know what the questions are.

Mr. WOLF. Well, they're all—they're fair questions, they're just budget questions. We're going to be—I mean, when can we expect a response?

Attorney General HOLDER. Well, again, I don't know what the questions—I don't know what it will entail to gather the information.

Mr. WOLF. Forget it, forget it, forget it, forget it, forget it. I'll submit them to you.

You know, we're just going to ignore you. I'm going to ignore you. We did the investigation. Your Civil Rights Division is a rats' nest. We have questions with regard to that. I think you've been a failure with regard to the prison industries. You were a failure with regard to prison rape. Senator Kennedy, Bobby Scott, and a group of us put together—it took you years to do that. During that time more people were raped.

So if you're not going to answer the questions it's interesting, you want us to reprogram. We reprogrammed the money for you. The fact is I had people ask me, why are you going to reprogram that money for the Attorney General when he did what he did? I said, well, I'm going to do it because I want to be helpful to the Bureau of Prisons, I want to do what's right. I don't want to be like some other people. Now you're going to be coming back and asking for others, and I'll try to help you there because I don't want to see—you took money from the FBI that is now doing very critical work to give to the Bureau of Prisons. Now other agencies. And I'll cooperate there, but, frankly, I'm not going to pay any attention to you because if you're not going to answer the questions, then we're not going to pay any attention to you.

Hearing adjourned.

Attorney General HOLDER. Well, Mr. Chairman—no, Mr. Chairman——

Mr. WOLF. Hearing adjourned.

Attorney General HOLDER. Mr. Chairman, if you want me to stay, I'll stay. I will stay if there are questions——

Mr. WOLF. They told me you had an important meeting.

Attorney General HOLDER. Well, you know what, that meeting will just have to wait. If you want to ask some more questions, let's go.

Mr. WOLF. Sure, then we'll go through the whole group then. They told me—Mike, what time did they say he had to leave?

Attorney General HOLDER. And that's right, it is an important meeting, but——

Mr. WOLF. No, no, no.

Attorney General HOLDER [continuing]. I'm making a determination, if you want me to stay, I'll stay.

Mr. WOLF. If it is an important meeting—they told me it dealt with the Boston issue; is that correct?

Attorney General HOLDER. It does.

Mr. WOLF. That's an important issue, and I wouldn't want you to miss it. The hearing is adjourned. I think you ought to go to the meeting.

Attorney General HOLDER. I would like to say this, you said some things that I think are a little unfair with regard to the Civil Rights Division, and a lot of what the Inspector General found in the Civil Rights Division preceded my time as Attorney General. We have taken steps to try to deal with the issues that were identified there.

And with regard to the whole question of prison industries, I have done as much as I could. I have been really supportive of that, I have tried to work with you in that regard. That's consistent with

the approach that I've taken that we need to do something with people who are in our prisons. We can't just warehouse them; we have to try to give them skills.

I'm proud of what we've done across the board with the Justice Department in the last 4½ years. I'm proud of what I've done as Attorney General. The Department that we have now is fundamentally different from the Department that I found when I got there. We don't hire people on the basis of political orientation, we don't do things as was done in the previous administration, we don't write memos that say that torture is appropriate when dealing with interrogation techniques. I am very proud of my time as Attorney General, and I'm proud of the men and women who have served under me.

Mr. WOLF. It took you years to do the prison rape rule. The Bureau of Prisons, we have asked them to bring in programs with regard to work. There's been no effort.

And I would end with this: The inspector general, reporting on the Voting Section of the Civil Rights Division, documented inappropriate and hostile harassment and other unprofessional behavior, including partisan and personal attacks. The Inspector General, your Inspector General, said this, quote, reflects a disappointing lack of professionalism over an extended period of time during two administrations, the last administration and your administration, and across various facets of the Voting Section operation. That was the word of your IG.

Attorney General HOLDER. Yeah, there is no question that work needs to be done, and we are in the process of trying to——

Mr. WOLF. Are you going to bring an outside group in, as we asked you to bring in, former Attorney General Thornburgh and others, to look at that?

Attorney General HOLDER. I think that what the Inspector General has done—there is an outsider. There is a neutral person who has looked at it and has made the findings that he has, and I think that gives us a good basis for action.

With regard to PREA, yes, we did go beyond the time period that we were given, in the same way that Congress went beyond the time frame that it was given, that it gave itself to try to come up with the statute. So we did the right thing with regard to PREA. We came out with, I think, regulations that are effective. We didn't come up with something that was half-baked. We took the time to make sure that what we proposed and what was put in place on a permanent basis——

Mr. WOLF. When you say Congress took too long, what did you mean by that?

Attorney General HOLDER. There were time frames that were in place before we got the measures that we were supposed to take that were blown through as well, and so we took the time that we needed. We took the time that we needed to get it right, and we got it right.

Mr. WOLF. The language was drafted by Senator Kennedy, and by Congressman Scott, and Senator Sessions and myself, and it will be a very good thing, and I think the fact that you put a man in prison or a woman in prison and they're raped is unacceptable.

With that, I want to give you——

Attorney General HOLDER. And I would agree with you, and we have done the right thing when it comes to PREA. Thank you.

QUESTIONS FOR THE RECORD—MR. WOLF

BOSTON TERROR ATTACK

Question. A number of press reports have indicated that the homemade bombs used in the Boston attacks were based on instructions printed in a 2010 issue of *Inspire*, which is part of Al Qaeda in the Arabian Peninsula's domestic radicalization effort.

The media has also reported that these types of IEDs are similar to those used by al-Qaeda and the Taliban in Afghanistan. Are these reports correct? If so, are you concerned that the department is doing enough to address radicalization and recruitment of Americans by groups like AQAP? What specific steps have you taken to prevent radicalization?

Answer. Current evidence from the April 15, 2013, Boston Marathon attack indicates at least one pressure cooker was used as an explosive device during the attack. This tactic has been seen in multiple past attacks from various extremist groups and lone wolves. The prevalence of pressure cookers in attacks is likely due to their ease of use and the widespread availability of instructions for creating such devices, to include in *The Anarchist Cookbook* and AQAP's *Inspire* Magazine, as well as on You-Tube.

The FBI actively seeks to identify violent extremists, including those who may be attempting to radicalize others to violence, in order to initiate appropriate investigative matters.

The White House released the *Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States* (SIP) in December 2011. The SIP articulates three primary goals: (1) enhancing federal engagement with, and support to, local communities that may be targeted by violent extremists; (2) building government and law enforcement expertise; and (3) countering violent extremist propaganda. The SIP calls for a whole-of-government approach, and calls upon the Department of Justice, Federal Bureau of Investigation, Department of Homeland Security, and National Counterterrorism Center to collaborate and coordinate implementation

Question. The FY14 request proposes an increase of $600,000 for the National Security Division for countering violent extremism. Has the Department's experience with the Boston attack and the apparent radicalization of U.S. residents led to any revision in the requirements for this mission?

Answer. Homegrown violent extremism is an evolving threat. The Boston bombing attack was a terrible reminder that homegrown extremists pose an immediate threat to the U.S. homeland. This type of terrorism is incredibly complex to investigate and prosecute. As terrorist groups have turned to

inspiring individuals across the globe to commit independent and more easily executed acts of terror, identifying and disrupting the threat has become increasingly difficult. Unlike the small, organized cells that we have traditionally dealt with, the emerging source of terrorism could come from anywhere, and the potential population of would-be attackers is not easily knowable. The National Security Division (NSD) engages in a robust planning process designed to anticipate the evolution of the terrorism threat, which is why our FY14 request specifically included additional resources to focus on countering homegrown violent extremism. These additional resources will allow us to better evaluate changes in the threat landscape and what we can do to prepare for and respond to those changes.

Question. The level of effort required to stand up and operate the JTTF surge in Boston was substantial. Could you please provide the Committee an estimate of the costs, in terms of overtime, travel, and other items, incurred by the Department to date for its investigative and other law enforcement costs associated with the attack?

Answer. As of May, 23, 2013, the United States Attorneys estimate that approximately 4,700 hours of work costing more than $485,000 have been dedicated to the Boston Terror Attack since April 15, 2013. In addition to this substantial level of effort, approximately $23,000 in other non-personnel obligations have been incurred to- date.

However, this case is in the beginning stages and over the course of the coming months, it is anticipated that the number of work hours will continue to increase and that substantial non-personnel obligations remain, including necessary costs for travel, litigative consultants and experts.

As of May 22, 2013, the FBI had spent $3,181,235 on responding to the Boston Marathon bombing. This amount includes funding spent on overtime, travel, fuel, supplies and equipment, utilities and other facilities-related costs, software, and maintenance. This amount does not include the substantial expenditure for salaries and benefits of FBI Special Agents, Intelligence Analysts, and other Professional Staff that responded to the Boston Marathon bombing.

As of May 17th, 2013, the ATF had spent $570,661.39 on the Boston Bombing Incident.

Question. The budget contributes to the Department's national security duties by providing more than $3.5 billion for the Federal Bureau of Investigation and National Security Division programs that are responsible for mitigating and countering the threat of terrorism. DOJ reports that battling the threat of terrorism and preserving national security continues to be a top priority. What are the biggest gaps in fulfilling the department's national security

mission? How does DOJ assess and prioritize terrorism threats to ensure it targets funding to the highest threat areas?

Answer. As I testified in April, the ability of the Department to carry out our work, including in the critical area of national security, will be jeopardized if the sequester continues. Despite our best efforts to reduce expenses, I remain concerned that employees at the forefront of the national security mission could face furloughs as soon as FY 2014. These furloughs would, along with the hiring freezes that have already been implemented, potentially create a gap in our ability to effectively carry out this mission.

The Department remains committed to using every tool and resource available, consistent with the rule of law, to combat terrorism and confront threats to our national security. The Department's FY 2014 budget request makes clear that defending national security from both internal and external threats remains the Department's highest priority. Additional resources requested for FY 2014, coupled with resolution of issues caused by the sequester, would go a long way to ensuring that the Department is able to maintain the strength of its national security programs. The Department is constantly reviewing its allocation of resources through the use of an intelligence-driven approach to ensure that we are targeting funding to the highest threat priority areas. For example, the Department requested several increases for high priority national security related programs for FY 2014, including combating homegrown violent extremism and cyber threats.

RADICALIZATION

Question. The Congressional Research Service has identified 63 homegrown jihadist terrorist plots and attacks since 9/11 including 42 arrests since April 2009. Last year we discussed the growth of this type of threat and the efforts underway in the Department to improve, not just federal responses and information sharing, but to get at the roots of the problem. The National Institute of Justice, using $4 million in FY12 funding, made awards last year to study domestic radicalization. Have there been any preliminary results from this work? Is further research being planned? Research supported by the domestic radicalization research grants in FY 2012 began on January 1, 2013. The projects remain in the data gathering phase at this time, and for this reason, preliminary results are not yet available. OJP's National Institute of Justice (NIJ) expects to have initial findings in 2014.

Answer. The domestic radicalization research projects currently supported by NIJ are:

- University of Arkansas: Identity and Framing Theory, Precursor Activities and the Radicalization Process;

- Children's Hospital of Boston: Understanding Pathways to and away from Violent Radicalization among Somali Refugees;
- Duke University: Community Policing Strategies to Counter Violent Extremism;
- Brandeis University: The Role of Social Networks in the Evolution of Al Qaeda- Inspired Violent Extremism in the United States;
- Indiana State University: Lone Wolf Terrorism in America;
- University of Maryland (National Consortium for the Study of Terrorism and Responses to Terrorism (START): Empirical Assessment of Domestic Radicalization; and
- RAND Corporation: Evaluation of the State and Local Anti-Terrorism Training (SLATT) Program (a program to "evaluate community-level programs that prevent/intervene in the radicalization process.")

In FY 2013, Congress appropriated approximately an additional $3.7 million (postrescission, post-sequester) for NIJ's domestic radicalization research. NIJ intends to use this funding to support additional research that will build upon the investments made in FY 2012 in areas such as individual violent extremists and the role of online radicalization.

Question. In December, 2011, the Obama Administration released its "Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States", which listed three major objectives: (1) enhancing federal community engagement efforts related to countering violent extremism, (2) developing greater government and law enforcement expertise for preventing violent extremism, and (3) countering violent extremist propaganda. However, recent Congressional Research Service analysis found there is no lead federal agency for the effort, with responsibilities divided between Justice, State, DHS, and Defense. The Justice Department role here is important. How would you assess the federal effort? Is there duplication of effort and resources? What is being done to coordinate programs of different Departments, and where does Justice fit in? The "Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States" highlights a coordinated, multi-faceted, and whole-of-government approach to addressing the threat of violent extremism. Departments collaborate and share responsibility, with complementary roles and without duplication. In order to ensure effective coordination and implementation, the Deputy Attorney General, the Deputy Director of the

Federal Bureau of Investigation, the Deputy Secretary of the Department of Homeland Security, and the Director of the National Counterterrorism Center meet quarterly to discuss current and future activities and challenges, and staff engage regularly to confer about ongoing projects and promote transparency. The Department plays a critical role in all three lines of effort outlined in the Implementation Plan.

CIVIL RIGHTS DIVISION—VOTING SECTION

Question. There is a need for an objective, in-depth review of the performance and management of the Voting Section. I wrote to you in March proposing that you commission a 60-day in-depth review of all officials, attorneys, and policies within the division and the Voting Section, conducted by a panel comprised of independent experts outside the Department, and led by a leader with integrity and experience, such as former Deputy Attorney General James Comey. At the hearing you testified, when commenting on findings from the Office of Inspector General review, that work needs to be done, and the Department is in the process of trying to take action. You also implied that you base your action on the OIG findings as a basis for that action, rather than initiate an external review. Please describe the process the Department has put into effect to act on the OIG recommendations, and when you expect to put them into effect.

Answer. The Office of the Inspector General's March 2013 report, entitled *A Review of the Operations of the Voting Section of the Civil Rights Division* (OIG Report), concluded an in-depth review of the performance and management of the Voting Section, which was initiated in September 2010 and lasted more than two years. The OIG indicated that in the course of this review, the OIG conducted over 135 interviews of more than 80 individuals, collected and analyzed data going back as far as 1993, and received more than 100,000 pages of documents. *See* OIG Report at 6, 19.

The OIG Report included five specific recommendations for the Division—four related to hiring, and one related to the processing of Freedom of Information Act requests. The Department carefully reviewed the recommendations and has instituted policy revisions, staff guidance, and other measures to implement those recommendations as well as the areas of concern that OIG noted in its report but that were not the subject of specific recommendations. For instance, these responses and additional measures include the following:

1. Even though the OIG report determined that the Voting Section did not consider politics or ideology in its hiring of new attorneys in 2010, the Division updated its hiring guidance in response to OIG's recommenda-

tions with respect to attorney hiring in order enhance hiring practices and maintain compliance with merit systems principles;

2. In response to OIG's recommendation that the Voting Section devote more resources to handling FOIA requests, the Division has devoted additional time of two managers and an additional paralegal was assigned to this work full-time;

3. In response to the OIG's concerns about staff professionalism, Division leadership has emphasized to the Voting Section employees' their obligation to treat one another with respect and professionalism, and the Division has revised its Equal Employment Opportunity (EEO), Anti-Harassment, and Whistleblower policy to explicitly reflect this obligation and to make clear that harassment, including through online blog postings, will not be tolerated;

4. Because we agree with OIG that political affiliation should play no part in staffing decisions or job assignments, the Division revised the Division's Hiring Guidance and EEO, Anti-Harassment, and Whistleblower policy to make this explicitly clear; and

5. With respect to OIG's concerns about continued unauthorized disclosures of non- public information, the Division has reiterated to all employees their duty to maintain the confidentiality of internal documents and information.

We note that a number of recommendations contained in the OIG Report related to matters that arose several years ago and that the Division had already taken steps to address. For example, many of the instances of unprofessional conduct examined in the recent OIG Report occurred in the period from 2004 to 2007, and include examples from nearly ten years ago. To the extent that the OIG Report identifies more recent issues regarding staff professionalism, such as the unauthorized disclosure of confidential information, we are taking steps to address these issues and to prevent their recurrence wherever possible. In addition, as the OIG Report acknowledges, the Division had already taken significant steps to address instances of improper or unprofessional conduct before the report was issued. *See* OIG Report 133–34. These measures include implementing annual training on anti-discrimination and anti-harassment obligations for all staff, developing and posting policies on prohibited personnel practices, and routinely reminding all employees of their obligations to conduct themselves in a professional manner at all times. *See id.* In response to the OIG Report, the Division has again reiterated for all staff their professionalism obligations, including the prohibition on harassment based on perceived political ideology.

MARIJUANA LEGALIZATION AND DECRIMINALIZATION

Question. The United States is a signatory to three international drug control treaties that have been ratified by the Senate. Raymond Yans, President of the UN International Narcotic Control Board, in reaction to actions by Washington and Colorado to legalize marijuana, asked the United States "to ensure the implementation of the treaties on the entirety of its territory." The Controlled Substances Act requires the attorney general to schedule and control drugs in accordance with international drug treaties to which the United States is a party. What would you say to Ambassador Yans about the actions by Washington and Colorado to legalize marijuana, and do you consider those actions to be inconsistent with U.S. treaty obligations? We appreciate President Yans' concerns about the marijuana legalization initiatives passed in Colorado and Washington State. Those initiatives present complex questions, and the Department of Justice is considering all aspects of the initiatives as part of its ongoing review. Marijuana, however, remains a controlled substance under federal law, and it continues to be listed in Schedule I of the Controlled Substance Act (CSA). The Department of Justice is fully committed to continuing our important counterdrug cooperation with the international community to combat drug trafficking, including marijuana trafficking, and to comply with our treaty obligations.

CYBERSECURITY

Question. It's challenging for the government to investigate every serious case of cyber espionage against our country and its companies. Several private investigators, like Mandiant, have produced ground-breaking reports on these threats, yet a number of these groups have also indicated that the U.S. Justice Department seems focused on threatening private investigators with criminal sanctions if they pursue the foreign spies too far. Companies who are under attack are investing large amounts in these investigations, and I believe our government needs all the help it can get identifying these cyber spies.

Instead of trying to restrict beneficial private investigations, why wouldn't the department find innovative ways to work with the investigators and their expertise? Are there reasonable guidelines that can be developed that that will prevent vigilantism but give us the benefit of private sector resources and initiative?

Answer. Addressing cyber threats is a priority for the Department. We are devoting significant resources to respond to cyber threats in general and to the theft of commercial data and intellectual property from private companies in particular. In the last year, the Department has supplemented its well-established nationwide network of cyber prosecutors who focus on cybercrime

with the National Security Cyber Specialist Network, which specializes in legal authorities and advice relating to national security cyber threats and connects cyber specialists in the National Security and Criminal Divisions with the Assistant U.S. Attorneys who handle cyber matters involving terrorists or nation-state actors across the country. The FBI has also substantially expanded its resources dedicated to cyber threats associated with economic espionage through the work of its Cyber Division and the National Cyber Investigative Joint Task Force, which merges the FBI's domestic intelligence and law enforcement authorities and capabilities with those of the task force partners to create a unified capacity to use intelligence and investigative techniques and tools to combat cyber threats.

We welcome the opportunity to—and, on a daily basis, do—work cooperatively with private companies to protect their data within the bounds of the law. We recognize that preventing sophisticated cyber theft requires a close working relationship among the government, the private companies that are being victimized, and those who are developing capabilities to prevent and mitigate cyber threats. That is why the Department, among other agencies, has been aggressively conducting outreach to private companies to inform them of the cyber threats of which we are aware and to provide them with actionable information that they can use to better protect themselves. Our close collaboration with industry has produced results, including the dismantling of international "botnets," networks of computers that have been infected unbeknownst to their owners and used to attack and damage other computers on command.

We also benefit from information provided by the private sector and rely on the technical expertise that researchers and members of industry can provide. We welcome the assistance of private companies and have delivered that message to them through our extensive private sector outreach efforts. In our experience, many companies are not idly standing by; they are actively taking lawful steps to police and safeguard their networks and using information that we are providing to them to prevent and respond to cyber intrusions that have resulted in the theft of their sensitive data. We are also working with companies that provide services that help protect companies being targeted by sophisticated data thieves and nation-states.

However, some companies propose activities that go beyond the measures permitted by law. Some of these proposed measures may themselves result in damage to an innocent or unsuspecting owner's or operator's network and may involve the use of techniques that violate electronic surveillance laws such as the Wiretap Act. A company that has been or may be a victim of a cyber threat does not, because of its status as a victim, gain authority to violate the law, particularly when those illegal actions could themselves harm other networks and contribute to the cyber security problem. In those circumstances,

the Department has a duty to enforce existing law and determine whether to prosecute such violations where appropriate.

Moreover, the laws that criminalize certain cyber activities are, in our experience, clear regarding the actions that are prohibited and do not require the publication of new guidelines for the public. The Computer Fraud and Abuse Act prohibits damaging or accessing a computer "without authorization." The Department has already published a complete manual providing guidance on computer intrusion statutes that is available to the public on DOJ's web site. The concerns raised about existing law generally have not concerned a lack of clarity. Instead they have focused on a desire by some companies to amend existing law to allow them to take action that is currently clearly prohibited by law: for example, to intrude upon a third-party's computer network to delete what they believe to be stolen data. In addition to being clearly prohibited by current law, we believe such actions raise an unacceptable risk of accidental or intentional damage to innocent third-party systems, international incidents that will harm U.S. interests where the data resides in a network abroad, and interference with ongoing investigations, and also risk setting a bad precedent that would embolden other countries to allow their companies to intrude into computer systems in the United States.

We also do not believe allowing intrusions by victim companies into third-party systems will meaningfully advance our shared interests in combating cyber theft. Significant progress has been made with respect to our government's and the private sector's ability to attribute intrusions to the actors behind them. While the government may not be as public in its accusations (in part because of concerns about protecting sensitive sources and methods), we appreciate the efforts of private industry to support cybersecurity.

Question. The FY13 appropriation urges the FBI to develop a national network of cyber task forces, modeled upon the JTTF structure, to coordinate efforts by federal, State, local and international partners. What is the status of Justice Department efforts to build such task forces and to integrate its efforts with existing federal or joint efforts and organizations dealing with different aspects of cyber threats to infrastructure, financial crime, and national security?

Answer. After more than a decade of combating cyber crime through a nationwide network of interagency Cyber Crime Task Forces, the FBI has evolved its program to more effectively counter threats posed by terrorists, nation-states, and criminal groups conducting computer network operations against the United States.

As a key component of its Next Generation Cyber Initiative, the FBI formalized a uniform network of computer intrusion-focused Cyber Task

Forces (CTFs) across all 56 field offices. At the start of FY 2013, Cyber Crime Program (CCP) violations transitioned from the Cyber Division (CyD) to the Criminal Investigative Division (CID). This change enabled CyD to focus its efforts solely on cybersecurity threats under the Computer Intrusion Program (CIP). Next, the FBI restructured and expanded its network of field office CTFs, emulating the successful Joint Terrorism Task Forces (JTTF) model, such that each office has a robust multi-disciplinary, cross-program, and multi-agency domestic ground team to conduct cyber threat investigations and respond to significant cyber incidents.

Each CTF conducts cyber threat investigations under the leadership of an FBI cyber squad supervisor. A CTF is composed of Special Agents working CIP matters, Intelligence Analysts, Computer Scientists, and existing state and local task force members working CIP matters. The CTFs act as the principal platform for cross- program collaboration in the field office on cyber topics. Collaboration between CIP personnel and those from the Counterterrorism, Counterintelligence, Weapons of Mass Destruction, and Criminal programs ensures that opportunities are fully identified and exploited through the development of joint strategies and joint operations. CyD works with the U.S. Intelligence Community and federal law enforcement agencies, in addition to international and private sector partners, to develop investigative opportunities for the CTFs.

NASA AMES

Question. Last month, Sen. Chuck Grassley, Chairman Lamar Smith and I wrote your U.S. Attorney for the Northern District of California, Malinda Haag, about a three-year FBI and Homeland Security criminal investigation into illegal technology transfers by foreign nationals at NASA's Ames Research Center was inexplicably dismissed—despite reports that the State Department confirmed to investigators that it was an illegal violation of export control laws. According to information provided by whistleblowers, one of the technologies compromised involved sensitive missile defense technology.

Federal law enforcement has indicated that the case was sent up to the Justice Department's National Security Division, where it was inexplicably dismissed. Please tell the Committee why this case was dismissed and who dismissed it. Would you also please provide me with a copy of the Declination Memo?

Answer. In response to an inquiry about allegations that the U.S. Attorney's Office sought approval to file charges in an investigation relating to NASA Ames and that its request was denied by the Department of Justice in Washington, DC, U.S. Attorney Melinda L. Haag provided the following

statement on February 12, 2013: "I am aware of allegations our office sought authority from DOJ in Washington, D.C. to bring charges in a particular matter and that our request was denied. Those allegations are untrue. No such request was made and no such denial was received."

For additional information responsive to the question, please see the attached letter (figure 1), dated July 17, 2013, which responds to earlier letters addressed to then Assistant Attorney General Lisa O. Monaco and U.S. Attorney Haag.

HUMAN TRAFFICKING

Question. Last month you testified before the Senate that since 2009 the Criminal Division has filed record numbers of human trafficking cases. BJS reports that between 2008 and mid-2010 the Department investigated over 2,500 incidents, half involving adult prostitution and 40 percent involving child sexual exploitation. And the National Human Trafficking Hotline reported last year that the volume of its hotline calls tripled between 2008 and 2011, with a 64 percent increase between 2010 and 2011. Given the growth of this problem, how much funding and how many personnel resources are included in your FY14 budget for this priority? The FY 2014 request includes $40.9 million and 171 positions for the Department's efforts to combat human trafficking. The FY 2014 funding request represents a *Question.* 2% increase

over the FY 2010 funding level of $35.2 million. These positions include an estimated equivalent 68 attorneys and 80 agents, consisting of even larger total numbers of staff who devote at least part of their time to combatting human trafficking.

In addition to the $40.9 million, the request also includes a new Domestic Trafficking of Victims Grant Program under the Crime Victims Fund. Focused on domestic victims, the $10.0 million program will support specialized services to victims of human trafficking. These funds will also be used to provide training and technical assistance to victim service providers, law enforcement agencies, prosecutorial agencies, faith-based organizations, and medical and mental health professionals.

Last year when you appeared here we discussed the work of the Polaris project, and you said you would be talking with them. Has that developed into something tangible you can apply to your efforts, or a cooperative approach?

Answer. One of NIJ's current grantees is working with the Polaris Project to field a survey that will better measure public awareness of trafficking in persons. This survey will also examine the effectiveness of state laws on the prosecution of traffickers. Under an FY 2012 NIJ award, Colorado College

Figure 1: Letter to Mr. Wolf regarding NASA Ames

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 17, 2013

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lamar Smith
Chairman
Committee on Science, Space
and Technology
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Grassley, Chairman Wolf, and Chairman Smith:

This responds to your letter of June 18, 2013, and follows up on our letter of April 17, 2013 in response to your letters to then Assistant Attorney General Lisa O. Monaco and United States Attorney Melinda L. Haag dated February 27, 2013, regarding allegations that political considerations influenced prosecutorial decisions in a matter involving the NASA Ames Research Center.

We want to assure you that political considerations had no bearing on the decisions made in this matter. As you have previously indicated, the United States Attorney has publicly stated that her office did not seek authority from the Department of Justice in Washington, D.C. to bring charges in the matter (and that, therefore, any allegation that such a request was denied was unfounded). Nonetheless, we take your concerns very seriously and undertook a review regarding the allegations raised in your correspondence. We have not identified any information that is inconsistent with the United States Attorney's statement.

You have also requested information about communications between various entities during the investigation. We note that consistent with the United States Attorney's Manual, during the course of the investigation, the United States Attorney's Office consulted with career attorneys in the National Security Division. In addition, the United States Attorney's Office had regular contact with NASA's Office of the Inspector General, which was one of the investigative

agencies in this matter. We are not aware of communications regarding this matter with the other offices referenced in your February letters. Finally, to the extent that you are requesting the details of any internal Executive Branch communications, consistent with long-standing Department policy, we are not prepared to provide those because we have significant confidentiality interests in internal deliberations relating to law enforcement matters.

We understand from your February 27 and June 18 letters that you may have additional information from law enforcement sources that would assist us in better understanding the genesis of your concerns. We appreciate that you have forwarded our request from April 17 to your sources; and we reiterate our request for any information you may have about this matter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance with this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary

The Honorable Eddie Bernice Johnson
Ranking Member
Committee on Science, Space and Technology

The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice Science,
and Related Agencies
Committee on Appropriations

is examining how public perceptions of trafficking and the elements of state trafficking laws impact the prosecution of traffickers at the state level. The Polaris Project is advising the research team as a consultant. The project began in 2013, so NIJ anticipates results no later than 2015.

Question. Last year we discussed the role you and the U.S. Attorneys could take in elevating the effort against human trafficking through more task force efforts. The FY13 Appropriation Act addresses the need to go after human trafficking and the criminal organizations that engage in it, and directs the Department to report on progress in meeting the target to have each U.S. Attorney establish or participate in regional human trafficking task forces. It also requires the Department to report on compliance with this direction. Is the Department on track to meet these goals?

Answer. As required by the Conference Report accompanying the Consolidated and Further Continuing Appropriations Act 2012, the Department of Justice provided a report to Congress in February 2013 indicating that all United States Attorneys offices have established, or are participating in, at least one regional human trafficking task force. These task forces include some that are operational and focus on criminal investigation and prosecution and others that address related issues such as regional coordination, information-sharing, and trafficking victims' unique needs. Task force membership generally includes federal law enforcement partners, state and local law enforcement, and various non-governmental organizations, including those providing victim services. In addition, some task forces also include tribal law enforcement, community and faith-based organizations, legal aid, and child and family service agencies. The February 2013 report to Congress contains additional information about the activities of the human trafficking task forces within the United States Attorneys' offices. The Department is currently working on a subsequent report.

Question. How would you assess the quality of the Department's performance, in terms of the numbers and types of investigations being undertaken?

Answer. The Department has continued to charge record numbers of human trafficking cases. In FY 2012, DOJ charged 55 cases involving forced labor and sex trafficking by force, fraud, and coercion through the Civil Rights Division's Human Trafficking Prosecution Unit (HTPU) and U.S. Attorney Offices (USAOs). Department-wide, including cases charged by USAOs in partnership with DOJ's two specialized units, the Civil Rights Division's HTPU and the Criminal Division's Child Exploitation and Obscenity Section, DOJ initiated 128 federal human trafficking prosecutions in FY 2012, charging 200 defendants. During this time, DOJ convicted 138 human traffickers. These

prosecutions ranged from cases involving single victims of domestic servitude to prosecutions against transnational organized criminal networks. As a result of these efforts, we secured life sentences against both sex and labor traffickers in four cases, including a sentence of life plus 20 years, the longest sentence ever imposed in a labor trafficking case.

Question. The Justice Department in 2011 initiated its Human Trafficking Enhanced Enforcement Initiative, establishing six Anti-Trafficking Coordination (ATC) Teams, on a pilot basis. Please describe the status of the initiative, and provide some substantive assessment of the impact these efforts have had to date.

Answer. The Phase I Pilot ACTeams are fully operational in six Districts: Western District of Texas, Central District of California, Western District of Tennessee, Western District of Missouri, Southern District of Florida, and Northern District of Georgia. The ACTeam structure has proven to be an effective means of enhancing coordination among federal investigative agencies and between federal agencies and federal prosecutors, both within each ACTeam District and between the law enforcement agencies in the District and the national subject matter experts at DOJ and the headquarters of the participating federal law enforcement agencies. ACTeams have demonstrated significant progress, many developing a robust docket of simultaneous active investigations and prosecutions as well as proactive case identification initiatives. While many of the ACTeam investigations and prosecutions are still pending, achievements have included: the first-ever domestic servitude case in the Western District of Missouri; a multi-victim, multi-defendant, multi-jurisdictional combined sex trafficking and labor trafficking case of unprecedented scope and impact in the Western District of Texas, conviction after trial of a violent sex trafficker in the Western District of Tennessee; indictment of a domestic sex trafficker in the Central District of California; and indictment of members of a transnational sex trafficking network in the Northern District of Georgia.

The substantive impact of the ACTeams extends beyond the individual cases currently charged in each District, and has included intensive capacity-building of advanced expertise. The ACTeams have established enduring coordination structures to streamline federal investigations and prosecutions that will continue to enhance the efficacy of federal enforcement efforts.

Question. The Human Smuggling and Trafficking Center was established pursuant to the 2004 Intelligence Reform and Terrorism Prevention Act. The Center currently has filled 25 of its statutorily mandated 40 positions, with only one from Justice – the Center's Deputy Director for intelligence. I

understand the FBI has advised the Center they intend to assign an agent and three analysts to the Center as well. What is the status of that plan?

Answer. In the past the FBI staffed the Human Smuggling and Trafficking Center (HSTC) with agent and analyst personnel. However, under current FY 2013 resource limitations, the FBI has advised HSTC that its employees would be more effective working the human trafficking threat from FBI Headquarters, and therefore reassigned them back to Headquarters.

The FBI is working with the HSTC on several projects, to include a national, multi- agency human trafficking threat assessment. The FBI will send one analyst, on temporary duty, to the HSTC to participate in the analysis contributing to the threat assessment. At the conclusion of the threat assessment, the FBI will evaluate assigning personnel to the HSTC on a more permanent basis.

Question. The William Wilberforce Trafficking Victims Protection Act of 2008 added "human trafficking" as a crime to be included in the FBI's Uniform Crime Report. Have steps been taken to facilitate the reporting of such crime in the UCR by participating law enforcement agencies?

Answer. Yes, human trafficking UCR data is currently being collected from state agencies. The FBI has conducted multiple training sessions with state UCR agencies to give guidance in this regard. Also, the FBI is currently building an application which will capture this data from FBI cases to be reported for UCR purposes. Moreover, the FBI plans to more systematically and routinely report data from its cases on all UCR data fields in the near future.

Question. In a February report, the National Institute of Justice identifies the need for better research to improve estimates of the prevalence of human trafficking—the data for which are "lacking in scope and quality at the federal, state, and local levels." This has led to poor confidence in statistics on this growing problem, with recent estimates of people trafficked in the U.S. each year varying from 14,500 to as high as 50,000. The report goes on to identify many possible reasons for this: difficulty in identifying victims; inadequate training of vice investigators; jurisdictional confusion; reluctance of prosecutors to pursue human trafficking as opposed to more familiar charges; and inconsistent reporting by State and local law enforcement—thereby undercounting the number of cases. What action is the Department taking to acquire better quality data on trafficking and its victims?

Answer. The issue of data collection on trafficking in persons is one that the Department takes very seriously, and it is working diligently to improve its ability to measure trafficking. DOJ is working closely with the federal

Human Smuggling and Trafficking Center on a project designed to merge data from across the government into one repository that will provide a more comprehensive, accurate picture of trafficking.

OJP's National Institute of Justice (NIJ) has also continued to make investments in research that is addressing this problem. Last year, NIJ released a report on an innovative new survey technique for measuring labor trafficking, and plans to build on this technique by funding similar trafficking research in the future. NIJ plans to release reports in late 2013 or early 2014 that measure the unlawful commercial sex economy in the United States and to improve and standardize data collection by offering a validated intake form for service providers who aid trafficking victims. In the field, NIJ is currently supporting studies that explore labor trafficking in the United States, review the case records of convicted traffickers to better understand the economics of trafficking, and examine the under-reporting of domestic minor sex trafficking in Illinois.

The need for more and better data and analysis of the prevalence and impact of human trafficking in the United States figures prominently in the Federal Strategic Action Plan on Services for Victims of Human Trafficking (SAP) in the United States. Agencies and departments across the Federal Government are taking action to better identify trafficking victims that are being served in domestic violence shelters (DOJ's Office on Violence Against Women and the Department of Health and Human Services (HHS)), runaway and homeless youth programs (HHS), juvenile justice (DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP)), and child welfare systems (HHS). Law enforcement entities are being trained and revising data collection to improve identification and prosecution of human trafficking crimes. Initiatives in this regard include: the addition of human trafficking crimes to the Uniform Crime Report (Federal Bureau of Investigation (FBI)); the deployment of specialized ACTeams that coordinate FBI, Department of Homeland Security, Department of Labor, and Department of Justice investigators and prosecutors; improved identification and reporting by Internet Crimes Against Children (ICAC) Task Forces (OJJDP); and Task Forces involving every US Attorney (Executive Office for United States Attorneys). In addition, the SAP has identified not only strategies to enhance understanding and awareness of human trafficking by the general public, government officials, and law enforcement but also by survivors who may not understand that they are the victim of a crime.

TRAFFICKING LETTER

Question. You still have not responded to my March letter containing the recommendations from the National Center for Missing and Exploited Children

on how to deal with Backpage.com. For years I have repeatedly asked you and your staff to identify legislative options to better enforce the trafficking that takes place on websites like Backpage.com—yet you **never** respond or provide helpful feedback. Time and again, you fail to lead on this issue. Will you commit today to responding to my letter detailing the specific actions the department will take regarding Backpage.com and providing guidance on what specific additional legislative authority the department needs?

Answer. The Department provided a written response to your letter on September 13, 2013, and also met with your appropriations staff to discuss current human trafficking enforcement efforts, the broad contours of the existing legislative landscape, evidentiary and other challenges in pursuing trafficking cases, including those inherent to online facilitation, and other ideas you raised in your correspondence. We welcome the opportunity to further discuss this important issue with you and members of your staff in the future.

TELEWORK AND WORK-LIFE PROGRAMS

Question. It is my understanding that the Department of Justice has decided to allow each United States Attorney to determine which work life programs, including telework, they choose to make available to assistant US attorneys in their Office. Why is this policy being adopted, rather than making such programs available to all Assistant United States Attorneys, with well-defined DOJ exceptions?

Answer. Although United States Attorneys' Offices pursue the same mission, the districts vary significantly due to size, geographic location, and other factors. United States Attorneys serve as the chief Federal law enforcement officers in their respective districts. They are responsible for effectively managing offices to ensure that the many law enforcement needs in their respective districts are addressed. Accordingly, it is essential that they have the flexibility to determine how best to administer important work life programs while at the same time, effectively meeting the public safety requirements in their districts.

Question. If employment of such programs is delegated to individual United States Attorneys, how can the Department achieve a consistent approach to implementation of telework and work life programs throughout all US Attorney Offices?

Answer. The Executive Office for United States Attorneys has established broad policy guidelines and parameters for United States Attorneys to follow when implementing work life programs. As noted in the response to the

previous question, United States Attorneys are responsible for effectively managing their offices to ensure that the many law enforcement and public safety needs in their respective districts are addressed. Accordingly, it is essential that they have the flexibility to determine how best to administer important work life programs while at the same time, effectively meeting the diverse requirements in their districts. We do not believe that mandating a one-size-fits-all approach to the implementation of work life programs is required or practical. We are, however, confident that each district will attempt to implement programs that satisfy the needs of the office and are consistent with Department policy.

PRISON RAPE ELIMINATION ACT

Question. Penalties for States that are noncompliant with the Prison Rape Elimination Act will begin in fiscal year 2014. I understand that States, in addition to having to meet the standards and be prepared for audits, will also have to supply information to the Bureau of Justice Statistics. We have heard that States, and in particular local governments, may be challenged to meet this schedule. What is being done to help train them to meet audit standards?

Answer. Following last year's publication of the final Prison Rape Elimination Act (PREA) standards, the Department of Justice has utilized its PREA appropriations to provide robust assistance to states and localities on standards implementation and audit preparedness via the National PREA Resource Center, operated by the Bureau of Justice Assistance through a cooperative agreement with the National Council on Crime and Delinquency. The PREA Resource Center's training and technical assistance efforts in the past 13 months have included more than 348 field-initiated requests, 37 webinars, and 21 regional training events with participants from all 50 states and the District of Columbia. The field has vigorously reached out to the PREA Resource Center for assistance, as demonstrated by the thousands of questions received and the more than 99,000 website visitors.

Audit-focused assistance has been increasing in advance of the start of the first PREA audit cycle, which begins in August 2013. During each year of the three-year cycle, agencies will be expected to have one-third of their impacted facilities audited. The audit tool and protocols for adult prisons and jails has been completed and made available to the public. The availability of this instrument and compliance measures has been widely communicated to the corrections field. In May, the PREA Resource Center provided four 1.5 day regional orientation sessions on the auditing tool. These sessions were widely publicized and each was attended by more than 100 participants. In June,

BJA and the PREA Resource Center hosted a national webinar with nearly 1000 participants to further discuss the audit tool and respond to questions. In addition, the first official 40-hour training session for auditors was delivered in June. PREA Resource Center staff and key officials in the Department of Justice are available to answer questions about the tool, compliance measures and audit process. On-going technical assistance is available through the PREA Resource Center to assist states and localities in understanding what they will be required to do to achieve compliance with the standards.

Question. The problems of prison rape are real and significant in State and local facilities. I received a letter from a rape victim, who described a State system that altered his medical records to say "inmate fell", rather than document his assault; forced him to repeatedly initiate reporting and investigation process; violated confidentiality; and ultimately denied him treatment when mental health staff stated "caseload and resource levels prevented them from giving counseling to sexual assault victims." This is the kind of failure that needs to be addressed. Funding to help implement PREA is available to States, but many of PREA violations are in local detention facilities. Furthermore, many State prisoners may be kept in local facilities under contracts. In addition, the new rules on PREA mean that auditors will need to be trained and certified, using the PREA Resource Center. What resources in the FY14 request specifically address such PREA implementation issues?

Answer. In FY 2014, the President's Budget requests $10.5 million under the Office of Justice Programs for the Prison Rape Prevention and Prosecution program. These funds will support the PREA Grant Program, training and technical assistance to the grantees in meeting their PREA goals and objectives, and training and technical assistance to the field at large in implementing the PREA Standards. As noted in response to the previous question, the PREA Resource Center is engaged in a variety of efforts regarding the upcoming audits.

The Department's implementation assistance includes both local and State facilities. The Resource Center's trainings and technical assistance are not limited to States but are available to units of local government as well. With regard to grants, the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113–6) appropriated funds for prison rape prevention and prosecution grants and adopted a proposal in the FY 2013 President's Budget to include new language that allows grants to units of local government to address prison rape in local detention facilities. The FY 2014 President's Budget proposes that units of local government continue to remain eligible for prison rape prevention and prosecution grants in FY *Question.*

GANGS AND GANG VIOLENCE

Question. The FY13 FBI appropriation includes a $9 million increase to combat violent gang crime, and rejected the proposed termination of the National Gang Intelligence Center—which you are again proposing to terminate. There was also language calling for the FBI to develop a nationwide anti-gang initiative, in coordination with ATF, the Marshals Service and DEA, and to report to the Committees on Appropriations within 90 days of enactment on the initiative and associated resources required to carry it out. What is the status of that planning process? What funding and resources are included in the FY14 appropriation to address this growing problem?

Answer. The FBI's FY 2013 Appropriation included a rescission of over $170 million. This rescission, combined with the FBI's $550 million sequestration reduction, limited the ability to support new initiatives, including a nationwide gang initiative. The FBI's FY 2014 request includes 731 positions (including 580 Special Agents) and $145.2 million in support of Gang programs, including Violent Gangs, Southwest Border violence, and Resolution 6 initiatives.

Question. Justice Department agencies, including ATF, BOP, and DEA, have years of experience in anti-gang efforts, including dismantling initiatives, prisoner re-entry programs, and anti-gang training and community outreach programs. Is the Department taking a comprehensive look at its full range of anti-gang programs with an eye towards leveraging them and reducing duplication of effort?

Answer. An important part of our anti-gang efforts is the direction and support we provide to our United States Attorneys, who are charged with leading local efforts to combat violent crime through prevention efforts, reentry programs, and enforcement. Consistent with the Executive Office for United States Attorneys (EOUSA) Management Standards and Attorney General directives, each United States Attorney's Office (USAO) is directed to have an effective Anti-Gang program, and to appoint a capable, experienced, well-respected Assistant United States Attorney (AUSA) to coordinate that USAO's Anti-Gang program. The Anti-Gang Coordinator is directed to consult with the District's federal, state, and local law- enforcement officials, social-service organizations, and community and faith-based groups to prepare and implement a comprehensive District-wide anti-gang strategy. Each USAO is also directed to implement a policy that defendants who proffer in cases involving gangs are thoroughly debriefed, and that information obtained from these debriefings is shared with law-enforcement officials for further investigation, as appropriate. In addition, each USAO is required to implement Project Safe Neighborhoods (PSN), a comprehensive anti-gun and anti-gang policy. Each USAO designates a PSN Coordinator who addresses PSN's core

elements designed to fit specific problems in the District. Implementation often includes outreach and prevention efforts aimed at deterring gang recruitment; targeting specific gangs for a more effective prosecution strategy aimed at reducing violent crime District-wide; and promoting efforts to provide employment and life-skills opportunities for former offenders—including gang members—who are reentering their communities from prison. For USAOs that seek or require assistance in their anti-gang efforts, EOUSA provides resources, such as national training at the National Advocacy Center, webinars, and facilitation of meetings with entities such as the National Institute of Justice's JUSTICE Team and research partners who can offer metric- based assessments designed to enhance anti-gang efforts.

As to duplication of effort, there is no duplication of reentry efforts among or between the Bureau of Prisons (BOP) on one hand and the Department of Justice's (DOJ) investigative agencies on the other. BOP does indeed have a number of reentry-related programs, but the DOJ investigative agencies do not focus on reentry, so there is no overlap or duplication. Further, the Deputy Attorney General's August 12, 2013, memo to all U.S. Attorneys requires each U.S. Attorney's Office to designate a Prevention and Reentry Coordinator. The Coordinator in each District will naturally coordinate efforts with other Department components to avoid duplication with BOP and state and local partners. With respect to dismantling initiatives, anti-gang training, and community outreach, each DOJ agency has a different focus, so duplicative efforts are unlikely. Several Districts already have in place PSN Task Forces or law-enforcement forums in which principals of several of the Department's local components, plus state and local partners, regularly meet to discuss pressing law-enforcement needs and emerging threats. These meetings also provide an opportunity for the agencies to learn about each other's initiatives and to avoid duplication. To the extent that Districts do not currently have these regular forums, the Deputy Attorney General's August 12, 2013, memo encourages each

U.S. Attorney's Office to convene a regular law-enforcement forum. Thus, it is expected that Districts that do not currently convene such a forum will do so in the near future.

CAMPUS SAFETY CENTER/ACTIVE SHOOTER PROGRAM

Question. I am pleased with your agreement to work with Congress and this Committee to establish a national center for campus public safety. What is the current status of plans for this effort, including associated funding and staffing requirements? In FY 2013, OJP received $2.75 million ($2.56 million after rescissions and sequestration) to establish a National Center for Campus Public Safety (NCCPS) and released a com-

petitive solicitation on May 17, 2013, to support the creation and maintenance of this center. Applications under this solicitation, available at https://www.bja.gov/Funding/13CampusSafetyCenterSol.pdf, were due to OJP by June 27. It is anticipated that BJA will award one or more grants in support of the NCCPS by September 30.

The FY 2013 funding will support the creation of the NCCPS and fund its operations for approximately two years.

Question. On March 26 the FBI El Paso Division hosted the first "Public Safety Tabletop Exercise", pursuant to its responsibilities under the Investigative Assistance for Violent Crimes Act of 2012 to help schools, universities and churches develop training and emergency planning to respond to "active shooter" situations such as witnessed at Newtown and Aurora. This FBI responsibility is shared with other Justice Department agencies, as well as with the Departments of Homeland Security and Education. How will this effort be coordinated with the national center?

Answer. On May 17, 2013, the U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA) issued a solicitation for proposals to establish and operate a National Center for Campus Public Safety (NCCPS). It is anticipated that BJA will award one or more grants in support of the NCCPS by September 30, 2013. Given that one of the critical roles assigned by Congress to the NCCPS is to serve as a clearinghouse for best practices, the FBI envisions collaborating with the Center to disseminate informational products to campus public safety executives (police chiefs, directors of public safety, and directors of campus emergency management). Since April 2004, the FBI Office of Law Enforcement Coordination has had a Special Adviser for Campus Public Safety. Part of this individual's responsibility is to keep the campus public safety community apprised of FBI resources and information available to assist them. The FBI, working in a close, cross-agency collaboration with BJA and the NCCPS will continue and further facilitate this sharing of information.

In addition, since the passage of the Investigative Assistance for Violent Crimes Act of 2012 and as part of the President's gun safety initiative, BJA and the FBI have expanded efforts to share best practices and lessons learned from active shooting and other mass casualty incidents. These efforts are three-fold and are designed to share information from after action analyses of active shooter incidents, including specifically those that have occurred on the campuses of institutions of higher learning. The first effort included transferring $1.1M in DOJ and BJA funding to support Texas State University's Advanced Law Enforcement Rapid Response Training (ALERRT) program which provide hands-on training to front line state, local, tribal

and campus police officers who are the individuals most likely to arrive first at the scene of a mass casualty or active shooter incident. More than 100 FBI Tactical Instructors have been trained and are now beginning to train law enforcement and additional FBI special agents. In a second effort, the FBI initiated the hosting of two-day conferences for law enforcement chief and command staff, to include campus law enforcement. These conferences have received praise, particularly from law enforcement in small and medium departments, such as those at institutions of higher education. To date, more than 4,200 law enforcement command staff have attended these conferences, representing more than 1,900 law enforcement agencies. And third, the FBI developed and hosted more than 50 tabletop exercises dealing with an active shooter incident with more than 1,700 participants representing more than 870 agencies. A campus-specific tabletop exercise has been developed and is being deployed to all 56 FBI field offices to be hosted during FY 2013. These exercises bring together campus public safety personnel, both sworn and unsworn members, as well as other first responders, campus executives and other supporting campus emergency preparedness efforts.

As the NCCPS is created, DOJ and the FBI will continue to share these information sharing best practices and lessons learned and integrate DHS and other federal agencies in planning efforts.

Question. What plans does the Department have for additional public safety training this year, and how is the program addressed in your fiscal year 2014 budget?

Answer. In FY 2013, the COPS Office will develop a model for, as well as training curriculum on, the effective use of school resource officers (SROs) in school safety programs for application to the proposed FY 2014 Comprehensive School Safety Program. The model and training curriculum will increase the ability of law enforcement agencies, educators, school administrators, and necessary stakeholders (including mental health and other service providers, parents and students) to work together under integrated and individually tailored school safety and security plans.

In FY 2014, the Department's Office of Justice Programs (OJP) will provide additional public safety training through a number of programs, including the Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability Initiative (VALOR), State and Local Anti-Terrorism Training (SLATT) Program, State and Local Assistance Help Desk and Diagnostic Center (Diagnostic Center), and Bureau of Justice Assistance (BJA) National Training and Technical Assistance Center (NTTAC).

The VALOR initiative is designed to support alert, knowledgeable officers and encourage supervisors and executives to focus on officer safety issues.

The FY 2014 President's Budget request for VALOR is $15 million, and will provide effective training for active shooter situations for 14,000 law enforcement officers, first responders, and school officials. VALOR will help them respond to this growing threat and ensure that they are prepared in the event that they do encounter violence in the line of duty.

The FY 2014 President's Budget request for SLATT is $2 million, and will support training for state, local, and tribal law enforcement on identifying emerging threats and stopping terrorist acts.

The Diagnostic Center connects communities to expertise, training, and technical assistance resources tailored to particular community risks and strengths. It provides assistance in identifying, assessing, and implementing evidence-based strategies to combat crime and improve public safety at the state, tribal, or local levels. In FY 2014, $2 million is requested for the Diagnostic Center.

The BJA National Training and Technical Assistance Center provides rapid, expert, coordinated, and data-driven training and technical assistance to support practitioners in the effort to reduce crime, recidivism, and unnecessary confinement in state, local, and tribal communities.

NATIONAL INSTANT CRIMINAL CHECK SYSTEM SUPPORT

Question. Assistant Attorney General Appelbaum wrote to me on March 13, 2013, advising that the Department plans to award $14 million in Byrne Justice Assistance Grants to improve NICS data, as well as $6 million in National Criminal History Improvement Program grants and $5million in NICS Act Record Improvement Program grants. What is the status of this effort?

Answer. The solicitations for these three programs closed on May 13, 2013. The solicitation for grants to improve NICS data, known as Improving the Completeness of Firearm Background Checks through Enhanced State Data Sharing, received 18 applications (14 state applications and four applications for the Technical Assistance component) requesting about $15 million out of an available $14 million. The National Criminal History Improvement Program (NCHIP) received 40 state applications requesting about $18 million in funding out of an appropriated $6 million ($5 million after rescissions, sequestration, and other reductions). The NICS Act Record Improvement Program received 18 applications requesting about $19 million out of an available $12 million ($10 million after rescissions, sequestration, and other reductions). The applications are undergoing initial review at this time.

Question. The National Instant Criminal Background Check System (NICS)

was established in 1993 to prevent ineligible people from purchasing firearms, yet according to the FBI, as of the end of March, one state had submitted zero mental health records to NICS and four states provided only one record. Under the NICS Improvement Amendments Act, the Department of Justice has the authority to penalize states that do not comply by withholding Byrne-JAG grant funding. While the Department has not exercised this authority in the past, we understand DOJ plans to do so in FY14. Will this encourage more states to submit these records?

Answer. Some states have been successful in submitting complete mental health records to NICS and others are making progress toward increased reporting. The Department cannot reasonably penalize noncompliant states before implementation of a statistically valid and reliable basis for the penalty. Any Departmental plan to impose the penalty provisions in the NICS Improvement Amendments Act would necessarily require modifications to the data collection and estimation methodology, upon which the penalty would be based. New state estimates could be *collected* in 2014 but the decision of whether or not penalties would be imposed, based on analysis of the collected estimates, would affect FY 2015 funding decisions at the earliest. States continue to add records to the systems utilized by NICS even in the absence of penalties and in some cases regardless of whether they are taking advantage of available grant funds. Some states have indicated that penalties can act as an encouragement while other states have indicated that increased grant funds act as a stronger incentive.

Question. You are requesting an additional $44 million for the National Criminal History Improvement Program (NCHIP). How many additional records would be added to NICS because of this increase?

Answer. With an additional $44 million in 2014, the NCHIP program will strengthen the background check system by providing stronger incentives to make available several key categories of relevant records and data, including criminal history records and records of persons prohibited from having guns for mental health reasons.

NCHIP helps states and territories improve the quality, timeliness, and immediate accessibility of criminal history and related records for use by federal, state, and local law enforcement. These records play a vital role in supporting criminal investigations, background checks related to firearm purchases, licensing, employment, and the identification of persons subject to protective orders or wanted, arrested, or convicted for stalking and/or domestic violence.

The difficulty in estimating in advance the number of new or additional records that would be made available to federal systems (including NICS)

stems in part from the fact that NICS relies on the states voluntarily submitting records to three FBI record systems utilized for the firearm checks: 1) the Interstate Identification Index (III) which contains criminal history information (i.e., descriptions of arrests, prosecutions, and court dispositions) on over 80 million individuals; 2) certain files in the National Crime Information Center (NCIC) pertaining to wanted persons, protection or restraining orders, sex offenders, persons under supervised release, and immigration violators which total nearly 5 million and 3) the NICS Index which contains nearly 4 million state-submitted records, including 2.7 million that identify persons prohibited from possessing or purchasing firearms due to mental health criteria.

The additional funding for NCHIP will help incentivize States and territories to provide critical information that will help protect community safety and keep guns out of the wrong hands.

FEDERAL PRISON INDUSTRIES, INC.

Question. Jobs for prison inmates, critical to helping them prepare for reentry into society and to make it more likely they will stay out of the criminal justice system, are falling in number. Between increases in government pay and operations costs, and declining business, fewer inmates are able to benefit from the experience that FPI can provide. I wrote to you last year, and we spoke at last year's hearing, when I asked if you would look into ways to repatriate business now going to China and other overseas suppliers. I asked if you would work with other agencies and Departments to develop a list of goods and items could be made through FPI operations. Could you provide that to the Committee?

Answer. We are very grateful for the additional authorities in support of the Federal Prison Industries (FPI or trade name UNICOR) program provided in the FY 2012 appropriation and are working on the new programs. In June 2012, a report was submitted to Congress, entitled "Increasing Inmate Work Opportunities" that gave a repatriation update and efforts to implement new authorities. A status update was also provided at the recent hearing. We are committed to working with you and your staff to provide updates of progress being made.

This past year, FPI has worked diligently to secure new business that is currently or would have otherwise been manufactured outside of the United States. At the time of the hearing, FPI's Board of Directors had approved 17 pilot proposals to date, 10 of which are active projects; since that time, 8 more proposals have been evaluated and approved by the Board. There are currently more than 100 inmates involved in repatriation projects thus far.

Should all of the active pilot projects become fully operational, there is the potential to employ between 300 and 500 additional inmates. These projects include: interior and exterior signage, LED lighting, medical scrubs, solar panels, linens and blankets, lumber wraps, butcher frocks, face hoods, and vest carriers. In addition to the approved pilots, several additional opportunities have been evaluated and approved recently by the Board. FPI continues to actively seek new business opportunities and has created an in-house business group to focus exclusively on business development.

FPI is also seeking to work with other federal agencies to manufacture products that are currently being made outside of the United States. We are working diligently with other agencies to develop a comprehensive list of items that could be made for federal agencies. FPI has met with Department of Justice components, as well as several agencies, such as the General Services Administration, the Department of Defense, the Department of Energy, and the Department of Commerce to enhance such inmate work opportunities. In addition, FPI managers met with the Federal Offender Reentry Group (FORGe), with representatives of different agencies, to promote FPI benefits and to encourage the purchase of FPI products and services. In addition, FPI is currently looking into and has already identified potential products that are being purchased from companies that are importing items such as boots, tee shirts, and baseball caps that can be made domestically and provided by FPI, and we are actively seeking other federal agency opportunities.

Furthermore, FPI is researching Federal procurement data to generate a specialized report to provide information that will better inform FPI on products being purchased by the federal government that could potentially be manufactured by FPI. FPI is also working directly with the Department of Commerce to request available data that can assist us on this question. FPI has recently met with the National Institute of Standards and Technology (NIST) within the U.S. Department of Commerce to discuss new ways to enhance repatriation opportunities for the manufacture of caps as well as other items made outside of the U.S.A. A vital component of NIST, the Manufacturing Extension Partnership (MEP), helps American businesses partner with other businesses to create American jobs and identify opportunities to bring work back to the U.S. from overseas. As a follow up to the meeting with NIST/MEP, additional strategies for FPI to partner with American businesses to repatriate and create additional jobs in the United States are being pursued.

In summary, FPI will continue to pursue additional repatriation projects and enhance efforts to produce items for federal agencies that are being purchased outside of the United States. FPI plans to provide updates to congressional staff on its repatriation efforts and submit on a quarterly basis regular updates to you on this question, as you have requested.

USMS REORGANIZATION/DETENTION TRUSTEE

Question. The FY13 appropriation eliminated funding for the Office for the Federal Detention Trustee and moved it under the US Marshals Service, anticipating it would result in efficiency, cost savings and cost avoidance by aligning all resources into one detention operations agency. What steps have been taken to achieve such efficiencies?

Answer. The U.S. Marshals Service and OFDT have completed the following actions:

- Transferred OFDT employees to the U.S. Marshals Service's Prisoner Operations Division (POD).
  - The lease for OFDT space expires this year and the U.S. Marshals Service does not plan to renew it, resulting in a savings of approximately $500K a year.
- U.S. Marshals Service staff is transferring recorded FY 2013 financial transactions into the U.S. Marshals Service's financial system (the Unified Financial Management System). Financial management of detention resources is being performed in accordance with U.S. Marshals Service policies and procedures, and these detention resources will be included in the audited financial statements of the U.S. Marshals Service.
  - Operations are now streamlined, including the elimination of reimbursable agreements between OFDT and the U.S. Marshals Service—which avoids the considerable personnel hours to monitor and properly execute such agreements;
  - Audit requirements are now reduced from two audits to one audit a year;
  - Accountability for both financial reporting and service provided is improved, as both are now directly associated with the U.S. Marshals Service; and
  - Rules of configuration, processing of transactions, disbursement, procurement, and payroll will all be governed under one financial system, which enforces U.S. Marshals Service policies, procedures, and audit standards.

While personnel and financial management are under a single command and control structure within the U.S. Marshals Service leadership, efforts are still underway to fully integrate the two offices by the end of FY 2013.

Question. The Marshals Service request proposes an increase of $55 million to expand housing and other capacity for its growing detainee population. How many more spaces are required to meet all the demand on the Marshals Service and how much bed space would this level of funding provide?

Answer. The President's Budget requests an increase of $55 million to ensure that the Federal Prisoner Detention account is able to pay for the housing, medical, and transportation costs of the detainee population. Detention space is obtained primarily through intergovernmental agreements with state and local facilities, as well as some private facilities particularly along the Southwest Border.

The U.S. Marshals Service projects an average daily population of 62,131 for FY 2014. This is an increase of 1,899 from the projected average daily detention population for FY 2013. The resources requested will fund the additional bed space needed for the increased population.

OBSCENITY ENFORCEMENT

Question. In response to concerns that consolidation of the Department's obscenity prosecution offices might limit adult obscenity enforcement, you advised us that cases involving only adults and adult obscenity have been prosecuted through US Attorneys' Offices, either alone or in conjunction with Child Exploitation and Obscenity Section (CEOS) or the Obscenity Prosecution Task Force, which you had proposed to merge into CEOS. What level of funding and staffing is supported in your FY14 budget request for this effort in the CEOS and US Attorney's Offices?

Answer. The Department continues to prosecute adult obscenity, but focuses its investigative and prosecutorial resources on cases where adult obscenity is used to facilitate child exploitation or cases that involve the sexual abuse of children. In FY 2014, the Department has requested $14.3 million for the Child Exploitation and Obscenity Section (CEOS) in the Criminal Division and $41.5 million for the U.S. Attorney's Offices to support obscenity and crimes against children investigations and prosecutions.

IMMIGRATION

Question. You are requesting a $25 million increase for the Executive Office of Immigration Review, to hire 30 new Immigration Judge Teams, and $4 million more for the Legal Orientation Program to help make immigration adjudication more efficient. How much will this reduce the current backlog in immigration adjudication?

Answer. The number of pending cases over time depends on the volume of existing cases, new charging documents filed by DHS, and completions. EOIRs current pending caseload volume in FY 2013 is approximately 330,000 proceedings. The number of annual completions by an immigration judge varies according to a number of factors, including the type of docket to which the judge is assigned. Taking into account variable completion rates among judges, EOIR estimates that 30 additional IJ teams will likely complete between 20,000 and 30,000 proceedings annually. The effect of this added productivity upon the pending caseload or backlog will depend on the number of additional charging documents filed by DHS during the same period. Finally, any gains in staffing and productivity may be lowered slightly due to normal staff attrition.

The $4 million increase in Legal Orientation Program (LOP) funding would enable the LOP to serve an estimated additional 30,000 detained aliens in removal proceedings each year. Based on the LOP Cost Savings Analysis (see figure 2, attached), the EOIR Office of Legal Access Programs (OLAP) estimates that these additional 30,000 detained aliens will have their detained court proceedings completed on average 12 days faster than otherwise, and that their time spent in ICE custody will be reduced by an average of 6 days. At an average daily detention cost of $119/alien, a reduction in length of custody by 6 days may result in net cost savings to the government in excess of $17 million annually (after deducting for cost of LOP increase).

STIMULUS OVERSIGHT

Question. The FY 2009 Recovery Act included $4 billion for Justice Department grant programs. How many stimulus fraud cases has the Department prosecuted, and is the Department continuing to pursue stimulus fraud cases? It is a priority of the Department of Justice to prosecute any fraudulent activities relating to the FY 2009 Recovery Act.

The Office of the Inspector General's Investigative Division has initiated investigations of four organizations/individuals, related to allegations of fraud or misuse of Recovery Act funds.

Effective and proper stewardship of grant funds is a top priority for the Department. The Department has aggressively pursued strict accountability for federal dollars. As a result, the Department has worked diligently and has made huge strides to improve every step in the grants-management process, from developing and issuing solicitations through the closeout of grant awards. These improvements help ensure OJP's grants are administered in a fair and transparent manner, demonstrating effective stewardship of federal funds expended for grants. These strategies include:

Figure 2: LOP Cost Savings Analysis

Cost Savings Analysis - The EOIR Legal Orientation Program
(Updated April 4, 2012)

In the Committee on Appropriations Conference Report of the recently-passed appropriation for the Department of Justice, the conferees indicated that they expect the Executive Office for Immigration Review (EOIR) to "seek alien-specific detention costs and duration of detention data from Immigration and Customs Enforcement (ICE) in order to develop a more accurate estimate of the cost savings to the Federal Government provided by participation in the LOP [Legal Orientation Program]."[1] The Committee then directed EOIR to "submit a report to the Committees on Appropriations providing such data, as well as an estimate of the cost of savings generated by the LOP."[2]

To prepare the required report, EOIR sought and received ICE duration of detention data, as well as data collected from the EOIR LOP contractor (the Vera Institute of Justice) for fiscal years 2009-2011. ICE also provided EOIR with information on the average detention costs per person per day for fiscal years 2010 and 2011. EOIR merged data from these two sources with its own court proceeding data and quantified ICE detention days and EOIR court proceeding completion times to study how these may vary for aliens served by the LOP.

Background
Earlier evaluations conducted by EOIR and the Vera Institute of Justice found that aliens served by the LOP (or other similar rights presentation programs) completed their immigration proceedings faster than those who were not served by such programs. EOIR's 1998 evaluation of its pre-LOP "Rights Presentation" pilot projects found that aliens at the three pilot project detention sites completed their cases 4.2 days sooner than those aliens whose cases were completed at those sites before the start of the pilots.[3] EOIR used this figure to estimate that INS (ICE's predecessor) could potentially avoid over $8 million in detention costs if the Rights Presentation projects were expanded nationwide. In FY2002 Congress appropriated funds to the Department of Justice for "legal orientation presentations".[4]

In 2008, the EOIR LOP contractor, the Vera Institute of Justice, conducted a multi-year comprehensive evaluation of the LOP program and found that detained LOP participants had immigration court case processing times that were an average of 13 days shorter than cases for detained persons who were not served by the LOP.[5] ICE duration of detention data was not available to the Vera Institute of Justice for this evaluation.

Over the past five years, the number of aliens served by the LOP has dramatically increased. The Vera Institute of Justice's evaluation examined LOP data from 2006, when the program was serving detained aliens in removal proceedings at six ICE detention facilities. In the past two years, the LOP served detained aliens at 25 ICE detention facilities.[6]

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[1] H.R. Rep. No. 112-284, at 233 (2011).
[2] *Id.*
[3] See http://www.justice.gov/eoir/reports/rtspresrpt.pdf
[4] H.R. Conf. Rep. No. 107-278, at 79 (2001).
[5] See http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf
[6] In FY2011, ICE housed detained aliens in more than 250 local and state facilities: see http://www.ice.gov/news/library/factsheets/detention-mgmt.htm.

Methodology

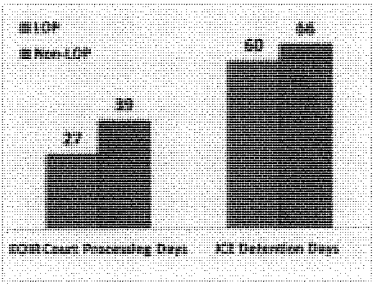
To accurately measure the impact of the LOP on duration of detention, EOIR processed and analyzed immigration court data over a three-year period (FY2009-2011) which were merged with data collected from ICE and the LOP contractor. EOIR then defined three key groups: 1) aliens in ICE detention facilities served by the LOP; 2) aliens in equivalent ICE detention facilities who were not served by the LOP or similar programs; and 3) aliens in ICE detention facilities that should not be included in the first two groups due to their uncomparable circumstances (for example, aliens serving criminal sentences, aliens who were not scheduled for court hearings, and aliens provided the LOP who were later released from custody).

To derive an estimate of the cost of savings generated by the LOP, EOIR used data provided from the U.S. Department of Homeland Security Annual Performance Report, Fiscal Years 2011-2013.[7] EOIR then applied the average bed cost per day for FY2011 to the difference in number of days in detention between those individuals who participated in the LOP and those in the non-LOP comparison group.

Findings

Consistent with the previous evaluation of the LOP in 2008, detained aliens' participation in the LOP significantly reduced the length of their immigration court proceedings. On average during FY2009-2011 (see below), detained aliens who participated in the LOP completed their detained immigration court proceedings an average of 12 days faster than those who did not participate in the LOP. ICE data showed that these same LOP participants spent an average of six fewer days in ICE detention than the aliens in the comparison group. [8]

Average Number of Court Processing Days and Detention Days for LOP Participants and the Non-LOP Comparison Group, FY2009-2011



[7] See http://www.dhs.gov/xlibrary/assets/mgmt/cfo_apr_fy2011.pdf, Priority Goal 4 on page 42.

[8] For FY2011, detained aliens who were provided LOP services on or before the day of their first immigration court hearing, consistent with the way the program is designed to operate, had even fewer court processing and ICE detention days that the comparison group. The 94% of LOP participants who received LOP services on or before their first hearing spent 11 fewer days in ICE detention and completed their immigration proceedings 16 days faster than the non-LOP comparison group.

In FY2011, the average bed cost per day for ICE was $112.83. Applying the average reduction of six detention days for LOP participants included in this report,[9] ICE saved on average roughly $677 in detention costs for each LOP participant. Applying these cost savings to all LOP participants considered in this report, the six fewer detention days on average for detained LOP participants saved ICE more than $19.9 million. After deducting the cost of providing LOP services for these participants,[10] the provision of LOP services resulted in net savings to the government of more than $17.8 million.

[9] For FY2011, 29,440 LOP participants were studied in the report. LOP participants in FY2011 on average spent six fewer days in ICE detention, just as was the case for FY2009-2011.
[10] In FY2011, the approximate per person cost for LOP services was $70.

- *Increased monitoring and oversight of grant funds.*—DOJ grant components put into action a hard-line approach to the monitoring and oversight of its grantees, implementing agency-wide standard policies, procedures, and internal controls. As a result, DOJ is consistently exceeding its statutory requirement to conduct programmatic monitoring of "not less than 10 percent of the aggregate amount of money awarded under all [its] grant programs." In FY 2012, OJP monitored grants representing more than twice the minimum award amount required by law. In addition, OJP policy requires program offices to conduct monitoring of 10 percent of their total number of active awards (due to its large number of awards, BJA is required to monitor 5 percent). In FY 2012, OJP exceeded this requirement by 44 percent, conducting in-depth monitoring of over 1,200 grants totaling $2 billion. OJP also conducts annual desk reviews on each of its grants, covering over 13,000 grants in FY 2012. In FY 2012 the COPS Office exceeded the statutory 10% monitoring requirement, via on site-visits. In doing so, the COPS Office reviewed 156 grants from 78 respective grantees. This represented a total dollar amount monitored of $226,475,012.

- *Risk-based Assessment of Grantees.*—DOJ grant components systematically assess grants against a set of risk factors to identify grantees that pose a risk to DOJ and prioritize monitoring activities accordingly. In fiscal years 20092011, this risk assessment was conducted annually. Beginning in FY 2012, with the benefit of increased automation of the grants assessment tool, grants are now assessed on a quarterly basis. Additionally, beginning in FY 2011, OJP's BJA began using an internal process called "GrantStat" to analyze qualitative and quantitative grantee performance data methodologically, to determine program effectiveness and goal attainment. The process works as an indicator system to identify issues and allow for early intervention with training and technical assistance as needed. Since FY2008, the COPS Monitoring Division has conducted an annual risk assessment of all active COPS awards to best determine a rationale for conducting monitoring activities. Additionally, the COPS Monitoring Division has always managed its monitoring schedule in a manner that can accommodate site visit referrals from the OIG, other COPS divisions and other external sources.

- *High-Risk-Grantee Designation.*—DOJ Grant Components reduce risk by identifying high-risk grantees using criteria as provided in 28 CFR 66.12 and employing compensating controls. OJP's Office of Audit, Assessment, and Management manages the DOJ-wide high-risk grantee designation process. The high-risk designation serves as an "early

warning system" for DOJ and requires that appropriate controls be put into place to help ensure that grantees with outstanding non-compliance issues implement timely corrective actions to ensure that a grantee's risk status is addressed during the grant award process, and that enhanced oversight and monitoring is provided to the grantee. The COPS Office works with grantees to ensure grant compliance, by providing online resources (i.e. the Financial Management Training Tool, the Grant Owner's Manual and other pertinent material). Additionally, when the Grant Monitoring staff conducts site visits they provide issue specific technical assistance and refer grantees to compliance related resource information. Finally, the Grant Monitoring Division conducts quarterly training for staff members, which consistently focuses upon the identification and resolution of grant compliance issues.

- *Training Grantees and Staff in the Detection and Prevention of Grant Fraud and Proper Financial Management.*—Annually, OJP's Office of the Chief Financial Officer provides training to all grantees through its Regional Financial Management Training Seminars and on-line financial management training tool. These seminars cover a range of critical topics on proper financial management, implementing sound internal controls, and preventing and detecting fraud. Additionally, OJP staff participate in grants fraud prevention and detection training offered annually and provided by the OIG's Fraud Detection Office. OJP also provides extensive technical assistance to its grantees to help address audit issues and establish adequate policies and procedures, particularly in small non-profit organizations and local and tribal agencies with limited administrative capacity.

- *Working Closely with the OIG's Fraud Detection Office.*—When DOJ grant components become aware of possible fraud or misuse of federal funds and receives non-frivolous allegations of fraud or misuse of federal funds, they notify the OIG Investigative Division's Fraud Detection Office for further examination. On a quarterly basis, OJP, OVW, and the COPS Office meet with the OIG Fraud Detection Office to discuss the status of ongoing investigative efforts and ensure proper coordination of investigative matters.

PRESIDENTIAL NOMINATING CONVENTION GRANTS

Question. The fiscal year 2012 CJS bill included $100 million for presidential nominating convention security grants. While some of these funds were used for extraordinary costs associated with the conventions, such as police

overtime, some were used for expenses that could be considered longer term expenses, such as renovation of a police headquarters, the purchase of 200 Safari land-Kona Patrol Bikes, which retail for $1,500 each, or the purchase of "chariot style electric vehicles." Why were such equipment purchases and building renovations an appropriate use for convention security funds?

Answer. All of the costs reported to the Office of Justice Programs (OJP) to date are permitted by statute and are otherwise allowable under this authorized program (and would have been considered generally allowable expenses under Justice Assistance Grant (JAG) rules, 42 U.S.C. 3751 et seq.), which permits flexibility in order to help the cities hosting nominating conventions address the significant security costs associated with them.

Minor renovation of the Democratic National Committee Command Center in Charlotte was necessary to create a more suitable environment for operations during the convention. Design and up-fit included providing workstations for staff members that worked in the command center during the convention, as well as fully-integrated audio and video equipment. Charlotte used a unified command structure in order to establish and maintain command and control throughout the event. By actively monitoring live video feeds, commanders in the Command Center essentially had "eyes on the ground," and were able to respond quickly and make better resource-allocation decisions. In addition, undercover officers strengthened the intelligence operation by interacting with demonstrator groups and coordinating with the Video Observation and Intelligence Office to utilize tools like, license plate readers, background checks databases, and social media. This would not have been possible without upgrading the Command Center within the police department.

Both convention host cities have reiterated that bicycles were essential in providing a rapid multi-agency approach to crowd control. For example, Charlotte described these as paramount to controlling crowds, providing flexible mobility and allowing officers to respond quickly to any situation and control movement of parades and marches. Bicycles were also used as physical barricades for directing the movement of large crowds.

All specialty vehicle requests, including T3 three-wheel transport vehicles and Segways, were requested to assist with the security of the events; particularly within the limited confines of the security perimeter.

Question. Has any of the equipment purchased with these funds been returned to the federal government for use by federal law enforcement or for use in future nominating conventions?

Answer. All equipment purchased under the convention grants will be treated consistently with the government-wide grant rules established by OMB con-

cerning property purchased by State or Local governments with federal grant funding, codified at Department of Justice regulations in 28 CFR Part 66.32. In general, such equipment should either be retained and used by the cities to assist future law enforcement and security efforts or transferred to neighboring local law enforcement agencies for continued use in the criminal justice field, as is consistent with the authorized purpose of the state and local law enforcement grant programs that provided this funding.

In many instances, equipment was purchased in collaboration with nearby agencies. For example, Tampa purchased handheld radios that were distributed and used during the convention and then transferred to nearby agencies (the Hillsborough County Sheriff's Office and the Clearwater Police Department). This was done in order to improve the interoperable communications among neighboring agencies. Charlotte transferred several pieces of equipment to outside law enforcement agencies post-convention, such as bicycles and Mobile Field Force protective gear. This type of collaboration allows for increased capacity building among other agencies and encourages mutual aid participation.

Question. Has the Department recovered any non-allowable expenses? Final budget expenditures are still being calculated by both cities, but preliminary figures do not cite any unallowable expenses. BJA worked diligently and closely in the pre-event stages to identify and purge obvious non-allowable expenses from proposed budgets precisely in order to avoid having to recover non-allowable expenses post-event. Reviews by the Office of Inspector General are active for both cities. Should any unallowable costs be identified, those funds would be recovered at the time of grant closeout.

COPS SET-ASIDE

Question. In FY12 the COPS Office set-aside 10 percent of hiring grants for "Attorney General priorities." The Committee understands that DOJ decided on what these priorities only after reviewing grant applications, and in some cases, the applications priorities fell into the "other" category. Applicants in the set-aside group had a significantly higher chance of receiving a grant than the remainder of the eligible applicants. Can you explain the rationale for this arbitrary selection process?

Answer. In FY 2012, the COPS Office asked all COPS Hiring Program applicants to target one specific public safety problem that would be addressed if awarded COPS hiring funding. Ninety percent of the available CHP funding was awarded to agencies with the highest total ranked scores as well as taking into consideration the statutory requirements. The remaining 10% of funding

was set aside to fund Department of Justice high priority crime problems. This funding was awarded to select applicants focusing on homicide and children exposed to violence/teen violence. The process for awarding grants under the 10% set-aside was also a competitive, rather than an arbitrary one, in that we follow the same evaluation process for applications considered in the 90% pool of funding. The only difference is that only applicants who identified a community policing problem area that fit within the scope of the DOJ priorities that the COPS Office identified to focus on in FY 2012 could be considered for funding from the 10% set-aside pool. The specific DOJ priorities that were picked as the focus areas for the FY 2012 were done so in collaboration with the Department. The COPS Office worked closely with the Department to ensure that the 10% set-aside funding supported problem areas that were both tied to DOJ priorities and addressed the most pressing public safety needs that were identified by law enforcement agencies in their CHP applications.

Focusing on the community policing plan of the eligible applicants, 19 agencies were selected for funding from this 10 percent set aside in the amount of $11,214,627. Agencies selected for ninety percent of the available funding may have also selected homicide, other violent crime and children exposed to violence/teen violence, in addition to those that were selected based on these specific problem areas.

The COPS Office's statute gives us the flexibility to determine the criteria against which applications for our grant programs are evaluated. This allows us to adapt to the changing needs of the U.S. law enforcement community. In 2010, the COPS Office completed enhancements to our hiring grant program application. These enhancements began with the 2009 COPS Hiring Recovery Program that was funded through the American Recovery and Reinvestment Act (ARRA). The current revised application allows us to evaluate applications objectively in the areas of fiscal health, community policing and crime rates. For example, the FY 2012 application included a number of fiscal health questions designed to establish an agency's financial need. We also asked a standard set of measurable questions that are designed to indicate the extent of community policing activity in which an agency is currently engaged and a set of community policing activities in which they plan to engage as they relate to specific public safety problems.

Question. In its FY14 submission, DOJ is requesting new legislative authority that would allow DOJ to set aside 5 percent of COPS funding for priority initiatives. Why would DOJ request this new authority if it has been doing a set-aside administratively for the past two years?

Answer. To avoid the appearance that the COPS Office is running a parallel

grant program, in its Fiscal Year 2014 budget request, the COPS Office is seeking legislative authority to set aside 5 percent of the COPS Hiring Program (CHP) funding to provide additional training and technical assistance to its hiring program grantees. This funding would be used to provide additional training resources, not grant funding, to CHP grantees specifically targeting the hiring, recruitment and training of law enforcement personnel.

Question. Does the Department plan to continue administrative set-asides in the absence of new legislative authority?

Answer. No. Understanding the concerns of the Appropriations Committee as reflected in the FY2013 explanatory statement, the COPS Office will not continue administrative set-asides in the absence of new legislative authority.

OVERLAP IN GRANTS PROGRAMS

Question. In July 2012, the Government Accountability Office (GAO) examined DOJ grant programs to identify potential duplication. Additionally, the Judiciary Committee recently held a hearing on this report. The GAO also noted that the Department uses a very narrow definition of overlap, which may lead to program duplication. Indeed, in the grant applications GAO reviewed, they found grantees applying for— and receiving—funds for similar purposes in multiple grant programs. For example, one grantee received funds through both the Office on Violence against Women and the Office for Victims of Crime to support child victim's services, using similar language in both applications. What is the Department doing to identify and eliminate overlap in its grant programs?

Answer. Preventing unnecessary/inappropriate duplication in government programs is a critical priority for the Department. The Department's three grant-making components have taken steps to avoid the types of potential problems cited by GAO. Managers and staff from the Office of Justice Programs (OJP), the Office of Community Oriented Policing Service (COPS Office), and the Office on Violence Against Women (OVW) regularly meet to coordinate their activities, and they pay particular attention to those areas where their programs are complementary.

In November 2012, DOJ initiated an assessment plan to specifically respond to the GAO recommendations. In December 2012, OJP, COPS, and OVW formed an assessment team and began a study to better understand the extent to which the grant programs currently have or have the potential for overlap. The principle objectives are (1) to mitigate the risk of unnecessary duplication and (2) to identify programs that may benefit from increased coordination to best leverage limited federal resources. As part of its work, the team

reviewed all of the department's fiscal year 2012 grant program solicitations and using a SharePoint survey, categorized them by key solicitation elements, including categories and subcategories on subject matter, focus group or target population, eligible applicants, and type of activities. The study is at the data analysis stage, using a relational data framework to identify potentially duplicative programs. Risk levels will be assigned to identify grant areas most at risk for potential duplication. The Office of Audit, Assessment, and Management is currently finalizing the initial report and we anticipate entering phase two of the analysis before the end of the fiscal year 2013.

Although GAO looked at potential duplication, it should be noted and emphasized that GAO did not identify a single instance of actual duplication. Moreover, public safety grant programs are naturally linked by the nature of our Nation's justice system; this does not mean, however, that they are inappropriately duplicative. For example, programs related to crime victims target different but linked purposes, such as providing direct assistance and counseling to victims and their families; providing law enforcement training to more effectively address the needs of victims; and funding research on victim issues at academic institutions. These programs are all victim-oriented, but they are not duplicative.

There are many examples of careful coordination across programs, such as the Consolidated Tribal Assistance grant program highlighted by GAO in its reports, as well as juvenile justice programs, and law enforcement grant programs. Specific examples include -

- OJP and the COPS Office review their respective local Justice Assistance Grant (JAG) Program awards and COPS Hiring Program awards to identify any jurisdictions that are receiving funds under both programs for salary and/or hiring to ensure that funding is not being used for duplicative costs.

- Close collaboration among OJP, the COPS Office, and OVW on the successful implementation of the Defending Childhood Initiative.

- High-level interagency collaboration on the National Forum on Youth Violence Prevention, Neighborhood Revitalization Initiative, Supportive Schools Initiative, and Interagency Reentry Council. (In its 2013 annual report, GAO recognized that the coordination efforts of the Department of Justice (DOJ) and other Federal agencies relating to their reentry efforts has prevented duplication and promoted the sharing of promising practices.)

Further, beginning in FY 2012, all OJP grant and cooperative agreement awards include a mandatory special condition, that requires the funding

recipient to report if it receives an award of federal funds other than the OJP award, and those award funds have been, are being, or are to be used, for identical cost items for which funds are being provided under its current OJP award. If this occurs, OJP will seek a budget modification, change-of-project-scope grant adjustment, or a deobligation of funds to eliminate any unnecessary/inappropriate duplication of funding.

Beginning in FY 2013, all OJP funding announcements require the applicant to disclose whether it has pending applications for federally-funded assistance that include requests for funding to support the same project being proposed and will cover the identical cost items outlined in its application. The disclosure includes both direct applications for federal funding (e.g., applications to federal agencies) and indirect applications for such funding (e.g., applications to State agencies that will be subawarding federal funds).

The Department works as a whole to coordinate and improve its grants management efforts. In 2010, the Office of the Associate Attorney General established the DOJ- wide Grants Management Challenges Workgroup, comprising grants officials from the COPS Office, OJP, and OVW, to share information and develop consistent practices and procedures in a wide variety of grant-administration and -management areas. To date, the working group has successfully established DOJ-wide policies and procedures for the high-risk-grantee designation program; developed and provided high-risk-grantee training for DOJ grants staff; and developed on-line financial management training for DOJ grantees and staff.

Additionally, the DOJ and OMB annual budget processes include a multi-level review of all component budgets prior to their submission and require programs to be modified or deleted if inappropriate overlapping or duplication is identified.

Your question refers to the GAO determination that some grantees applied for and received funds for similar purposes in multiple grant programs. As the Department indicated in its response to GAO's February 2012 report on the issue of duplication and to GAO's July 2012 report on DOJ grant management, the examples identified by GAO as potential duplication were not substantiated. As noted previously, GAO merely cited examples of potential duplication. DOJ examined the grant awards themselves and found no instance of grantees' being reimbursed twice for the same work. Although GAO acknowledges DOJ's findings, the examples remain in the report in purported support of GAO's determination. One example cited in the GAO report as potential duplication involves OJJDP and COPS Office grants to the Georgia Bureau of Investigation. DOJ determined that each of three grants is being used to target different issues, including child prostitution and potential sexual slavery issues in Georgia; Internet crimes against children; and identification of sex offenders. A second example cited was the fact that

one applicant received funding under two awards, one from the Office for Victims of Crime and the other from OVW, to support child-victim services through its child advocacy center. DOJ reviewed these two grants, to the Tulalip Tribes of Washington State, and determined that the Tribes sought multiple funding sources because neither source adequately covered the costs to establish the center and then carry out its activities in subsequent years.

Question. While OVW and OJP use the same grants management system, the COPS Office uses a completely different system that has no automated way to communicate with the other system. Additionally, the GAO found that OVW, OJP and the COPS Office do not share list of current and potential awardees, increasing the risk of duplication. Does the Department plan to consolidate these systems to reduce the risk of overlap?

Answer. OJP, working with OVW and the COPS Office, awarded a contract to the Gartner consulting firm to perform a study to understand the degree of commonality and differences across the three grant management components and to determine the feasibility of a common system solution. Conclusions from the Feasibility Study Report (issued in August 2012) confirmed that a common solution for use across the three grant-making components is feasible.

Subsequently, Gartner was contracted to perform a second study to use a business case analysis to determine the best-fit approach for a common, enterprise-wide solution for use across the DOJ grant-making components. As part of this study, Gartner analyzed four options:

Build Replace existing systems with a custom solution. **Enhance** Enhance either COPS's CMS solution or OJP's GMS solution. **Buy** Replace existing solutions with either a commercially available (COTS) solution or a government solution (GOTS). Stay the Course Business as usual for all components (no change).

Gartner determined (reference March 2013 Gartner Report), and the Department agreed, that the "Build" option provided the best opportunity for full functionality; however, the cost of the initial investment was deemed prohibitive and the option was risky. Therefore, Gartner recommended pursuing the "Buy" option. Specifically, Gartner suggested focusing on buying the Department of Health and Human Services (HHS) grants solution which is offered as part of the Grants Management Line of Business. The third option, and most cost-effective solution as determined by Gartner, was to enhance the COPS Office's CMS solution for all DOJ grant-making components.

After taking the Gartner recommendations into account, executive leadership from OJP, the COPS Office, and OVW have decided to move forward with exploring the HHS option to buy, as well as enhancing the COPS Office's

CMS solution. As of May 2013, both of these options are being explored, as well as the associated cost to the Department.

In the short term, OJP and the COPS Office are working together to share grant data by providing combined information from all three components into a single data repository that program staff can access. We anticipate that the data repository will be available in early FY 2014 and expect this to aid the components in avoiding the potential for overlap or duplication.

Regarding the sharing of current and potential awardee lists between COPS, OVW, and OJP, COPS has taken a number of steps to reduce the risk of duplication. Programmatically, since 2010, COPS has participated in the Coordinated Tribal Assistance Solicitation (CTAS) with OJP and OVW. Through CTAS, tribal grant funding is coordinated through a single solicitation and application review process across the three components. As part of that solicitation, applicants report on any funding they are requesting from multiple DOJ components to ensure that the funding is coordinated. All three components also coordinate on the selection of grantees and awards. In addition, COPS includes a special condition in the CTAS award document stating that funding from one Department cannot duplicate funding received from another tribal grant program.

In FY 2012, COPS expanded its coordination with OJP by sharing its 2012 COPS Hiring Program funding list prior to OJP making its Byrne Grant fund awards. This coordination effort identified any agency that would potentially receive officers from both programs to make these agencies aware of the non-duplication requirement. In addition, COPS reached out to all of the grantees that had sworn personnel identified in their grant programs, and advised them in writing that as recipients of both COPS and BJA grant funding, they would be responsible to notify COPS of any duplicative line item costs, and to address those costs by formally requesting a grant program modification. This will occur again in the awarding of FY2013 grants.

Efforts to reduce the chance of duplication are being enhanced further in FY 2013. In December 2012, the COPS Office and BJA entered into a formal Memorandum of Understanding (MOU) regarding collaboration and information sharing. A primary goal of the MOU is to ensure that BJA and COPS are meeting the needs of the field in a complementary manner, and similarly, reviewing potential grant awards to ensure that they are complementary and not duplicative. Additionally, although it was always a grant requirement, the COPS Standard Application now includes an explicit special advisory to all applicants that they may not use COPS funding for the same item or service funded by another Department of Justice award. It also requires all applicants to report grant funds received from other Department of Justice program offices (including OJP and OVW).

Question. From fiscal year 2005 through fiscal year 2013, approximately $35 billion has been appropriated to support the more than 200 grants programs that DOJ manages. Given the significance of this funding and the 8 recommendations that GAO has already made to improve the efficiency of DOJ's grant operations, what are your specific timelines for addressing these recommendations? Is consolidation of grant administrative functions likely and what do you estimate the department will save as a result?

Answer. To address the GAO recommendations to conduct a study to identify overlap in DOJ grant programs and develop approaches to minimize the potential for unnecessary/inappropriate duplication, the DOJ grant making components are carrying out the following:

In November 2012, DOJ initiated a review to better understand the extent to which the grant programs currently have or have the potential for overlap. The principal objectives are (1) to mitigate the risk of inappropriate duplication; and (2) to identify programs that may benefit from increased coordination and better leveraging of limited federal resources. The Department expects to be able to issue an initial assessment report in June 2013. The study team has approached this review with the aim of creating a replicable process for determining risk of inappropriate duplication that can be used across the grants life cycle.

The DOJ grant-making agencies have completed a feasibility study to improve information and data-sharing among the grant-making components. The study focused on documenting each component's grant-making business requirements and conducting case studies of alternatives for a shared grant-making system. Based on study results that found potential for greater collaboration, the components are examining several recommended solutions for a shared system that will best meet requirements and budget constraints. Using a shared platform among the grant- making agencies would allow for greater sharing of information to enhance collaboration and minimize potential inappropriate duplication at both the program and grant award levels.

As the potential solutions for a shared system are examined, OJP has made its existing data infrastructure available to allow the COPS Office to share and access application and grant-award data using OJP's enterprise reporting and business intelligence tools. (It should be noted that OVW and OJP were already using this infrastructure.) This is expected to support automated reporting and analysis of grant and applicant data to assist in identifying potential inappropriate duplication of grant funding.

As a further step towards coordination of back office functions, OJP provided the COPS Office with full, read-only access to the Grants Management System (GMS) used by OJP and OVW, for coordination and information

sharing purposes. In addition, OJP currently provides OVW and the COPS Office with many administrative services. These services, include financial monitoring, program assessments, various technology services, civil rights complaint processing, and selected communications services.

The Department is reviewing solutions for a shared grants management system, but we are not considering (nor did GAO suggest) consolidating all administrative functions. That said, the Department will continue to find and achieve administrative savings where possible.

Question. Since 2007, Congress has appropriated more than $100 million each year to the Department of Justice (DOJ) to help reduce the backlog of DNA cases resulting from crime scenes and to enhance crime laboratory capacity of state and local governments. What assurances can DOJ give that the monies appropriated are having a measureable impact in reducing the DNA backlog? What estimates can DOJ provide on when the DNA backlog will be minimized so as to not require this level of funding requests?

Answer. Funding awarded to state and local governments under the National Institute of Justice (NIJ) DNA Backlog Reduction Program (which is supported by OJP's appropriation for DNA-related and forensic programs and activities) is used to process, record, screen, and analyze DNA obtained from crime scenes (casework) and/or DNA database (convicted offender and/or arrestee) samples. This program also supports efforts to increase state and local crime laboratories' capacities to process DNA samples.

Since 2007, federal funds awarded by NIJ have been utilized for testing 307,758 cases and for the processing of 1,450,052 DNA samples from convicted offenders and arrestees. As a result, 133,725 forensic DNA profiles and 1,474,696 convicted offender or arrestee DNA profiles have been added to the Combined DNA Index System (CODIS) database. Such additions increase the likelihood of suspect identification in past and future cases. Without federal assistance, state and local laboratories would have processed cases or convicted offender or arrestee DNA samples more slowly, limiting backlog reduction.

Although state and local laboratories are processing more cases than in past years and doing so more efficiently, recognition of the value of DNA evidence has been growing, and the demand for DNA testing continues to exceed the capacity of such laboratories to process these cases. In 2011, state and local laboratories closed 248,085 cases, approximately 10 percent more than they closed in 2009. However, those laboratories reported receiving 241,575 requests for DNA services, a 16 percent increase from 2009. State and local governments have expanded efforts to collect DNA samples from convicted offenders and arrestees, and there are increasing efforts by state and

local law enforcement agencies to process previously untested sexual assault kits. Demand for DNA testing is accelerating faster than laboratories can expand their capacity. NIJ has published a detailed discussion of backlogs titled *Making Sense of DNA Backlogs Myths vs. Reality*, which is available at https://www.ncjrs.gov/pdffiles1/nij/232197.pdf.

Closing the gap between supply and demand for forensic analysis depends on achieving technological breakthroughs. While OJP's NIJ is using the majority of its DNA-related and forensic programs and activities funding to directly support state and local government crime laboratories, it is investing in innovations to secure a long-term solution to the backlog.

NIJ is meeting this need by supporting, among other things, the development of advanced robotics that can process offender/arrestee DNA samples faster than standard, manual approaches. NIJ is also finding innovative ways to move drug analysis, which contributes the highest volume of requests for forensic analysis, out of the laboratory and into the field to conserve laboratory resources for other needs. In 1995, the average processing time for a sample for a DNA profile was three days. By 2009, that sample processing time was down to four hours. Modern prototypes are able to process samples in less than one hour.

NIJ has no reliable way to estimate when the DNA backlog will be minimized. Laboratory capacity is increasing, but demand for services is matching that increase. A long-term solution depends on innovations that make evidence processing faster, cheaper, and more automated.

OFFICE OF AUDIT, ASSESSMENT, AND MANAGEMENT

Question. The Department of Justice's Office of Audit, Assessment, and Management (OAAM) is responsible for assessment and oversight of OJP and COPS grants; however, its purview does not extend to Office on Violence Against Women (OVW) grants. GAO has said that you have the authority to expand OAAM's mandate to cover OVW grants, which could provide better assessment and reduced risk of duplication. Do you plan to exercise your authority to do so?

Answer. The Department continues to work actively to ensure that coordinated oversight and consistent policies and procedures exist for all its grant programs. Convened in January 2010, the DOJ-wide Grants Management Challenges Workgroup comprises grants officials from the COPS Office, OJP, and OVW, and works to share information and develop consistent practices and procedures in a wide variety of grant-administration and management areas. OAAM provides support services to OVW relating to coordination and resolution of single audits, management of the high risk grantee pro-

gram, and technical assistance and use of the Grants Management System used by OVW and OJP. OVW management staff participates in the OJP Grants Management Board's meetings and share information on grants policy and procedures. Additionally, OVW voluntarily participates in DOJ-wide assessments conducted by OAAM, including the current duplication study to identify overlap and potential duplication in DOJ grant programs. The Department believes there is sufficient cooperation between OJP and OVW that an official expansion of authorities may not be necessary.

METH LAB CLEAN-UP

Question. In February 2011, DEA had exhausted all of the $8.3 million in fiscal year 2011 DOJ COPS funding for state and local meth lab clean-up and did not restart operations until October 2011 when fiscal year 2012 funds became available. Does DEA expect FY 2013 DOJ COPS funding for state and local meth lab clean-up to be sufficient to cover demand? If FY2013 funds do not appear to be sufficient, what steps is DEA taking to address the potential shortfall?

Yes, DEA expects the FY 2013 COPS transfer funding for state and local meth lab cleanup and training assistance to be sufficient to cover all state and local cleanup requests. In FY 2013, DEA received a $12.5 million transfer from COPS, which leaves $11.87 million after the sequestration is applied to the transfer. DEA has been able to reduce cleanup costs by working with its state and local partners to expand the use of the Container Program. As of May 2013, there are 10 states with operational container programs: Illinois, Alabama, Virginia, Indiana, Oklahoma, North Carolina, Kentucky, Arkansas, Tennessee, and Michigan. DEA has signed letters of agreement in place with an additional 6 states to implement the program: Mississippi, New York, Florida, Pennsylvania, Kansas, and Ohio. DEA is working with these states to identify container sites, procure equipment and supplies, and schedule training for law enforcement. This process typically takes 9–12 months to go from a signed Letter of Agreement to fully operational. We expect three of the six states (Ohio, Florida, Mississippi) to become operational in FY 2013 and the other three states (Kansas, Pennsylvania, New York) to become operational in FY *Question.*

DISCONNECTED YOUTH INITIATIVE

Question. The request includes a new $130 million initiative to "improve outcomes for disconnected youth;" however, budget documentation provided to the Committee has scarce detail about this initiative. Can you provide

the Committee with additional information about this initiative and what specific, concrete results you expect it to produce?

Answer. Inconsistent and overlapping federal program requirements sometimes prevent states and communities from effectively coordinating services or using funding to support strategies that are most likely to achieve the best outcomes. In 2014, the Administration proposes establishing up to 13 Performance Partnership pilots involving up to $130 million in existing discretionary federal resources that are designed to improve outcomes for disconnected youth, including young adults who have dropped out of school and are not employed. Approved performance partnerships designed at the state or community level could blend discretionary funds for youth-serving programs across agencies in exchange for greater accountability for results. Performance indicators, such as education and employment outcomes, would be used to gauge progress, and evaluations would study which locally designed strategies work best.

The Administration will work with community and nonprofit leaders both secular and religious to explore the potential for similar performance partnerships in other areas, like revitalizing distressed communities and reducing youth violence. The Budget also includes $25 million in the Departments of Education and Labor to support the development of pilots, youth-focused Pay for Success projects, and other activities to improve outcomes for this population.

BULLETPROOF VESTS

Question. The Department's bulletproof vest program has at least $27 million in unobligated balances. What obstacles is the Department encountering in expending these funds?

Answer. The primary issue contributing to unobligated Bulletproof Vest Partnership (BVP) balances is that some jurisdictions did not request payment against the available fund balances. OJP's Bureau of Justice Assistance (BJA) extended the deadline for using funding from previous years in order to provide more time for the jurisdictions to use these funds. However, some jurisdictions were not able to provide the match funding and were therefore unable to use this funding to purchase vests. With these issues in mind, BJA has implemented a number of policies and mechanisms to reduce the amount of unused funding.

Following a statutory amendment to allow certain waivers, in FY 2010, BJA began allowing a financial hardship waiver of the 50 percent match requirement. If they receive such a waiver, jurisdictions experiencing financial hardship are able to request up to 100 percent of the cost of the vests they

purchase. This has allowed jurisdictions that would not otherwise have been able to use their BVP funds to provide vests for their officers. This statutory waiver authority was not available to the Director of BJA prior to FY 2010, but has significant potential for reducing unobligated BVP balances in the future.

In addition, BJA allows extensions of the deadline for using funding awarded in previous years. BJA also sends reminder blast emails to any jurisdictions with unused balances. This notifies a jurisdiction that an expiration date is approaching and the BVP balances should be requested.

Subject to congressional concurrence, OJP plans to supplement FY 2013 and FY 2014 BVP appropriations with prior year deobligated balances from previous years. This should allow large jurisdictions (which receive only partial reimbursement for the vests they purchase under the BVP program) to receive a higher percentage of their bulletproof vest costs. In FY 2012, large jurisdictions only received eight percent of the amounts requested in their applications.

U.S. ATTORNEYS

Question. Within DOJ, the 94 U.S. Attorneys' Offices represent the United States in civil and criminal matters, and as the nation's principal litigators, the performance of these offices is critical to DOJ achieving its law enforcement and justice goals. In this constrained budget environment, it is increasingly important that government entities, including U.S. Attorneys' Offices, be held accountable for the results they achieve with the federal resources they expend. What is DOJ doing to track and evaluate the collective and individual performance of U.S. Attorneys' Offices to assess the extent to which these offices are contributing to department-level goals? What do the evaluation results indicate?

Answer. The Executive Office for United States Attorneys (EOUSA) provides general executive assistance and supervision to the 94 U.S. Attorneys' Offices (USAOs). The Director of EOUSA is mandated by 28 CFR 0.22 with evaluating the performance of the USAOs, making appropriate reports and inspections and taking corrective action where indicated.

In September 2010, pursuant to a congressionally-approved reorganization, EOUSA established the Office of Planning, Evaluation, and Performance (PEP). This reorganization brought together the various staffs and functions within EOUSA that are responsible for allocating resources among USAOs, measuring the use of those resources, and evaluating the results generated by the resources.

Within the PEP office resides the Evaluation and Review Staff (EARS), the Data Analysis Staff (DAS), and the Planning and Performance Staff. EARS directs and oversees the periodic on-site evaluations of USAOs. These evaluations serve to ensure compliance with governing policies and procedures guarding against waste, fraud, and abuse. They also provide useful information on how offices are deploying resources and meeting the prosecutorial priorities promulgated by the Department. The evaluations also provide valuable feedback to assist United States Attorneys in managing their offices.

The Data Analysis Staff analyzes caseload and workload data submitted by each of the 94 USAOs, and publishes reports that assist with the management of the USAOs. Moreover, DAS provides its analyses to the EARS program evaluators to better prepare the evaluation team for its on-site work, giving the team additional perspective and identifying potential matters to examine during an evaluation.

The Planning and Performance Staff tracks and analyzes how USAOs utilize key resources, such as those specially-allocated for defined prosecutorial purposes.

Driven by the information from on-site evaluations and statistics from the USAOs' case and time management systems, EOUSA is constantly examining how effectively and efficiently resources are being used, accounting for crime trends, high priority program goals, and our national priorities. As is the nature of law enforcement itself, this ongoing assessment remains a fluid process. Yet one theme remains consistent: the USAOs have actively and vigorously pursued the Department's priorities to protect our national security, fight financial and violent crimes, and protect the most vulnerable in our society.

FAST AND FURIOUS FOLLOW-UP/GUN VIOLENCE

Question. The FY13 Appropriations Act includes a general provision that prohibits funding for operations that entail straw purchases of firearms for transfer to criminal organizations unless such transactions are subject to continuous monitoring by law enforcement. What steps has the Department taken to ensure this has been translated into operational policy for the Justice Department and its agencies?

Answer. On November 3, 2011, ATF issued a memorandum to all field agents clarifying its policy regarding firearms transfers. This policy was formalized on March 19, 2013, in an ATF Order, and broadcast to all ATF employees on March 26, 2013. The policy states that interdiction or other forms of early intervention may be necessary to prevent the criminal acquisition, trafficking, or misuse of firearms, and that during the course of an investigation, protecting

the public and officer safety should be the primary considerations. Under the policy, an agent must take all reasonable steps to prevent a firearm's criminal misuse. In this regard, the policy expressly prohibits a firearm involved in a government-controlled transfer from leaving ATF's control. A government-controlled firearm transfer (also known as a controlled delivery) occurs when the Government actively participates in the transfer of a firearm to a person, whether associated with a drug cartel or otherwise, believed to be unlawfully acquiring or possessing the firearm. The firearm(s) involved in the controlled delivery may or may not be owned by the government. Continuous physical (onsite) surveillance by ATF is required for a firearm to be considered within ATF's control. This policy was instituted to ensure that ATF is effectively pursuing those individuals involved in firearms trafficking schemes while protecting the public.

TERRORISM TRIALS VS. DETENTION—TRIALS IN NEW YORK

Question. In the past month the Justice Department has announced the unsealing of several high profile indictments of individuals charged with various terrorism statutes for conspiracy and other crimes in connection with al Qaeda and other terrorist organizations. Are these cases imposing new demands on the Justice Department's prosecutorial and detention resources? Are they sustainable? How much will Justice spend, and how many personnel resources will be required, to investigate and prosecute such cases in FY14?

Answer. The Department of Justice (DOJ) and each United States Attorney's office (USAO) has prioritized, and will continue to prioritize, the disruption and prosecution of terrorism and terrorism-related crimes. Recently, indictments have been unsealed in several high profile cases, including the case against Ibrahim Suleiman Adnan Adam Harun in the Eastern District of New York and the case against Sulaiman Abu Ghaith in the Southern District of New York, as well as others. Certainly, significant resources are necessary to investigate and prosecute these cases, and each such case imposes "new demands" on the existing resources of the DOJ community. But there should be no doubt that all appropriate and necessary DOJ resources have been and will be directed toward cases such as these, to ensure that they are fully and completely prosecuted. We cannot presently put a comprehensive dollar figure on the expected prosecution cost of these or other cases, but we will seek to ensure that the DOJ community has the necessary resources to continue to prosecute these cases.

The Department of Justice works to house high profile individuals in Bureau of Prisons facilities when possible; therefore, such cases would not have a significant effect on the Federal Prisoner Detention account. However,

the movement and court production of these detainees requires U.S. Marshals Service resources, including multi-vehicle motorcades, additional court security, and protective details as necessary.

The detention requirements for terrorism suspects vary, depending on multiple variables (such as the need to separate the detainee from the general prisoner population, capabilities of the detention facility, risks associated with transporting the defendant to the courthouse, and requirements imposed by the judiciary in order to ensure a fair trial) making it difficult to predict detention costs. Each case of detaining suspected terrorists is unique. The specifics of each situation determine the overall cost (i.e. number of defendants, venue, special handling requirements, transportation) and detention costs are a part of the total. Nevertheless, these cases do not present unusual demands on the U.S. Marshals Service as the Service has for many years handled high-threat trials. The costs associated with high-threat trials are incorporated into the USMS detention and salaries & expenses budgets and are sustainable.

Question. Ahmed Warsame recently pled guilty to numerous counts, including support for al Shabaab. His plea agreement contemplates the possibility that he or his family could be offered protection under the Witness Security Program of the U.S. Marshals Service. Would this set precedent? Is the Marshals Service equipped and funded to provide such support if it is found to be necessary to protect a potential witness from harm?

Answer. The Department of Justice's Office of Enforcement Operations authorizes witnesses to enter the Witness Security Program. The U.S. Marshals Service's responsibility lies in providing a method to securely change the identity and location of individuals while in the Program. These witnesses are cooperating with the Federal Government, including those testifying in terrorism-related prosecutions.

Over the last 20 years, as the Federal Government has devoted more resources to the prosecution of terrorism cases, the Program has evolved to include witnesses in domestic and international terrorism prosecutions. The Department's prosecution of terrorists requires providing protection for a small number of former known or suspected terrorists and their family members, as well as innocent victims of, and eyewitnesses to, planned and executed acts of terror. The cooperation of these witnesses is essential to securing criminal convictions of those responsible for planning and committing acts of terror. These witnesses have provided invaluable assistance to the U.S. and foreign governments in dismantling terrorist organizations and disrupting terrorist plots.

The U.S. Marshals Service assesses the capability of providing protection

of potential witnesses from harm on a case-by-case basis. The Program has successfully protected over 18,300 participants including innocent victim-witnesses and cooperating defendants and their dependents from intimidation and retribution. No witness or family member of a witness who has followed Program guidelines has ever been seriously injured or killed as a result of his or her cooperation while in the Program. The Program receives appropriated funding to provide security and relocation assistance to all witnesses accepted and authorized into the program.

QUESTIONS FOR THE RECORD—MR. ADERHOLT

CHILD ADVOCACY CENTERS

Question. Last year, your FY13 budget proposed eliminating the funding for the Victims of Child Abuse Act. This critical program provides funding for local Children's Advocacy Center around the country, as well as national organizations that help local communities develop centers that provide child abuse victims services and train child abuse professions. These programs help children recover from abuse and reduce the prevalence of abuse through their coordinated multidisciplinary approach. These centers are also cost efficient and effective in reducing the cost of intervention in child abuse cases and bringing perpetrators to justice.

Congress did not agree with your FY13 proposal, funding the Victims of Child Abuse Act program at $19 million. Yet, your recently released FY14 DOJ proposal once again eliminates funding for this critical program and instead suggests these funds could be replaced through a larger more open-ended competitive grant category. Can you please explain?

Answer. The Department shares the concerns raised by Congress and the Administration about the current state of the nation's economy and the need to cut the federal budget deficit and restore fiscal sustainability. The decision not to request funding for the Victims of Child Abuse Act program was a difficult one that was driven by the need to balance many competing juvenile justice priorities. In FY 2014, the Department emphasized providing adequate funding for the nation's highest-priority juvenile justice programs (such as the Part B Formula Grants and Missing and Exploited Children Programs) and supporting innovative, evidence-based programs (such as the National Forum on Youth Violence Prevention and the Community Based Violence Prevention Initiatives) in its budget decision-making.

Activities authorized by the Victims of Child Abuse Act can be continued under the Delinquency Prevention Program, for which the FY 2014 President's Budget requests $56 million. After $20 million is set aside for the new Juvenile Justice and Education Collaboration Assistance program, $36 million will be

available to support juvenile justice priorities such as the Court Appointed Special Advocates (CASA) Program, the Child Abuse Training Program for Judicial Personnel, and other juvenile justice priorities. OJP is committed to helping its state, local and tribal partners combat child abuse and will continue to build on the success of programs such as those authorized by the Victims of Child Abuse Act.

Question. In a recent Senate Judiciary Hearing, Senator Coons had the opportunity to directly speak with you on the Victims of Child Abuse Act. In his exchange, Senator Coons asked you the reasons for eliminating the Victims of Child Abuse Act funding in last year's budget. I appreciated your answer that eliminating these funds was a mistake. But your FY14 request cannot guarantee that this priority will be funded. This seems like a step backwards. These programs are evidence-supported, cost effective and have been continuously cited in the Department's Model Program Guide and annual budget requests. How can you assure this Committee that these will continue to be funded?

Answer. As mentioned in the previous response, activities authorized by the Victims of Child Abuse Act can be continued with funds requested in the FY 2014 President's Budget for the Delinquency Prevention Program. The Department strongly supports the objectives of the Victims of Child Abuse Act and will continue to work with OJP to help state, local, and tribal criminal and juvenile justice systems respond to child abuse and its consequences. The decision to fund the Victims of Child Abuse Act program through the Delinquency Prevention Program balances the need to fund child abuse programs with other important juvenile justice priorities and available funding.

TEDAC

Mr. Holder, as you may remember, I continue to be interested in the FBI's Terrorist Explosive Device Analytical Center, or TEDAC, has been processing IEDs coming in from Iraq and Afghanistan.

Question. What is the status of construction of the new TEDAC in Alabama?

Answer. Phase I of the FBI's TEDAC Construction project, which includes construction of a laboratory building, synthesis laboratory facility, and a dedicated explosives range, will be completed in 2014, and will become fully operational in the Spring of 2015.

Question. Is there a proposed timeline for completion?

Answer. The FBI anticipates that all of the buildings included in Phase I construction will be completed in 2014, and will become fully operational in the Spring of 2015.

Question. Has this project been affected by sequestration, and if so, what has that impact been?

Answer. At this point, no. The construction effort currently underway (Phase I) is fully funded and on-track. Estimated recurring operations and maintenance costs is over $60 million annually for which the FBI pays $10 million and $50 million has historically been provided by Joint Improvised Explosive Device Defeat Organization (JIEDDO). The uncertain budget environment impacts not only the FBI but also TEDAC partners as well.

Question. Are the current TEDAC facilities involved in examination of this week's tragic bombing in Boston, MA?

Answer. In response to the Boston bombing incident, the FBI's Terrorist Explosive Device Analytical Center (TEDAC) deployed a team of Special Agent Bomb Technicians, a Forensic Device Examiner, and a Physical Scientist Technician. TEDAC worked 24/7 collecting and processing evidence. Other TEDAC Forensic Chemistry Examiners and Intelligence Analysts prepared bulletins as new information became available. This investigation and the processing of evidence is expected to continue for weeks and consume hundreds of man-hours.

LAWSUITS AGAINST FEDEX AND OTHER PRIVATE PACKAGE DELIVERY COMPANIES

Question. The Department has described the "operational challenges" presented by the Department of Justice budget. Should the DOJ be using its limited resources on criminal investigations of FedEx and other private package delivery companies? Don't these companies have longstanding partnerships with the federal government, displaying a history of cooperation in law enforcement efforts? Isn't this asking them to be your policemen?

Answer. DEA is aggressively targeting the diversion of controlled substances, as well as those who facilitate their unlawful distribution, using all available tools and resources. The recent prosecution and settlement with a package delivery company is the result of an investigation by the Financial Investigative Team of the DEA, with the assistance of the Food and Drug Administration, Office of Criminal Investigations.

Package delivery companies have a history of cooperation in law enforcement efforts. However, the investigation of the diversion of controlled

substances is the responsibility of law enforcement authorities, such as DEA. We are not asking for these companies to be our policemen, but a package delivery company that fails to implement procedures to comply with the law is subject to civil and/or criminal liability under the Controlled Substances Act and other federal laws. A package delivery company that fails to implement procedures to close the shipping accounts of Internet pharmacies known by the company to be using the company's delivery services to distribute prescription drugs without valid prescriptions has facilitated the unlawful distribution of controlled substances. In such cases, investigation of the facilitation is warranted.

Question. In instances where there are allegations of pharmaceutical diversion involving pharmaceutical manufacturers, wholesalers, or distributors, those matters are typically addressed by DEA through administrative or civil proceedings, isn't the DOJ treating non-registrants such as private package delivery companies worse by pursuing criminal investigations?

Answer. DEA is aggressively targeting the diversion of controlled substances, as well as those who facilitate their unlawful distribution. While we appreciate the concerns raised by this question, decisions whether to pursue civil or criminal proceedings depend upon the circumstances of each case.

Question. Is the DOJ subjecting the United States Postal Service to the same scrutiny as private carriers

Answer. DEA treats all violations of the Controlled Substances Act (CSA) equally, regardless of whether the violations are committed by a federal, state, or private entity.

Question. FedEx has publicly stated that if the DOJ will provide it the names of dispensing pharmacies that are operating illegally, the company will immediate cease doing business with those accounts. Why doesn't the DEA supply such a list to the package delivery companies?

Answer. We appreciate the concerns raised in this series of questions, and will continue to explore options to address them. However, it is not the role of the Department of Justice to announce publicly the names of criminal enterprises that might be using package delivery companies so that the package delivery companies can refrain from doing business with such criminal enterprises. As all citizens and businesses are entitled to due process of law, the Department of Justice cannot simply declare an entity to be operating illegally. For this reason and others, it is the policy of the Department of Justice to neither confirm nor deny the existence of any pending or ongoing investigations. This longstanding policy does not relieve a package delivery company from being

subject to civil and/or criminal liability under the Controlled Substances Act and other federal laws, where otherwise appropriate.

Question. The DEA has asked for $360 million to combat pharmaceutical diversion, and has thousands of special agents assigned to investigate and stop diversion. Is this level of funding necessary if DOJ is simply pushing its law enforcement burden off to private industry by holding package delivery companies criminally liable for the actions of diverters who use their services?

Answer. DEA is not pushing its law enforcement responsibilities off to private industry. Rather, DEA is investigating diversion and targeting those individuals and businesses that facilitate the unlawful distribution of controlled substances. DEA's FY 2014 budget request of $361 million for the Diversion Control Program funds 1,497 positions, of which 626 are diversion investigators, and 291 are special agents plus approximately 220 Task Force Officers. By law, DEA is required to fund the full cost of the Diversion Control Program through the Diversion Control Fee Account. Diversion Control Program resources support a wide variety of regulatory and enforcement efforts to prevent the diversion of controlled substance pharmaceuticals and listed chemicals. As DEA fulfills its diversion control responsibilities, it also works with other state, local, and Federal partners, as well as members of the registrant and business community.

Question. Package delivery companies are not required to register under the Controlled Substances Act, and are not part of the "closed system of distribution." The investigations of package delivery companies appear to be efforts by the DOJ to unilaterally subject private sector package carriers to a regulatory framework. Does that not require legislative action by Congress, and the development of regulations through a standard rulemaking process with input from industry?

Answer. Although package delivery companies are not DEA registrants, their conduct may subject them to civil and/or criminal liability under the Controlled Substances Act and other federal laws. For example, recently United Parcel Service, Inc. (UPS) was investigated for violating numerous laws, e.g., conspiracy, 18 U.S.C. 371, 21 U.S.C. 846, 18 U.S.C. 1956(h); distribution of controlled substances, 21 U.S.C. 841(a)(1); money laundering, 18 U.S.C. 1956 or 1957; and misbranding of pharmaceuticals, 21 U.S.C. 331, et seq. In March 2013, UPS and the United States Attorney's Office for the Northern District of California entered in to a Non-Prosecution Agreement. In this agreement, UPS agreed to accept responsibility for its conduct, to forfeit $40 million in payments it has received from illicit online pharmacies, and to implement a compliance program designed to ensure that illegal online

pharmacies will not be able to use UPS's services to distribute drugs.

Question. DEA officials have made public statements that the domestic internet pharmacy problem has been solved with the passage of the Ryan Haight Act. How many criminal actions against doctors or pharmacists has the DOJ initiated using the tools provided under the Ryan Haight Act?

Answer. Internet pharmacy cases may involve a variety of charges including, but not limited to: drug distribution, conspiracy, fraud, and money laundering. The primary drug statute used by United States Attorneys' offices (USAOs) is 21 U.S.C. 841. The Ryan Haight Act added subsections (h) (1) (A) and (B) to that statute. However, the USAOs' case management system does not systematically track the use of subsections within 21 U.S.C. 841, nor does it track whether defendants are doctors or pharmacists. Accordingly, we cannot provide an accurate number of prosecutions of doctors and pharmacists under the Ryan Haight Act, we can share the following recent examples where the USAOs have prosecuted individuals, including doctors and pharmacists, who distributed controlled substances through the use of internet pharmacies:

- *United States v. Napoli et al.* (Northern District of California). On March 26, 2013 and March 27, 2013, nine defendants, including doctors and pharmacists, were sentenced for their roles in illegally distributing controlled substances to customers who bought drugs from illicit Internet pharmacies. The defendants were also collectively ordered to forfeit more than $94 million in illegal proceeds. From 2003 through 2007, the online pharmacy, Pitcairn sold more than 14 million doses of Schedule III and IV controlled substances, earning over $69 million in its four years of operation using websites such as `ezdietpills.net`, `pillsavings.com`, and `doctorrefill.net`. Defendant Michael Arnold laundered Pitcairn's illegal proceeds through accounts in at least eight different countries. From November 2004 through December 2006, the internet pharmacy, Pharmacy USA/ SafescriptsOnline ("Safescripts"), sold more than 13 million doses of Schedule III and IV controlled substances, earning more than $24 million in its two years of operation. As part of the conspiracies, doctors approved customer orders for controlled substances that were not for a legitimate medical purpose and when the doctors were not acting in the usual course of their professional practice. The doctors would review online questionnaires submitted by customers that briefly described their medical history. At no time did the doctors physically examine the customers or validate the information provided.

- *United States v. Hazelwood et al.* (Northern District of Ohio). On November 20, 2012, James Hazelwood, a leader of a multi-state drug

conspiracy that sent millions of dollars' worth of highly addictive prescription painkillers to all 50 states, was sentenced to more than eight years in prison and ordered to pay $3.8 million in restitution. Hazelwood operated USMeds, LLC and later, American Health Alternatives. Hazelwood, through both companies, worked with pharmacists and pharmacies who supplied drugs to the organization, which Hazelwood then distributed to people who contacted him through the companies' web sites or call centers. Hazelwood set up and maintained web sites, including `www.usmedsovernight.com`, `www.verybestmeds.com` and `www.mydoctorconsultonline.com`, to solicit customers to buy hydrocodone and other pills without valid prescriptions. Customer, not doctors, selected the type of controlled substance, quantity and strength to be "prescribed." Customers paid for their "consultation" and pills up front, via credit card, and medical insurance was not accepted. Doctors signing the drug orders did not physically examine customers or even meet them face-to-face. Instead, after selecting the drug he or she wanted, the customer filled out a brief online questionnaire, the customer had a short "telephone consultation" and the prescription was issued. The conspiring pharmacies then shipped the drugs via FedEx to thousands of customers across the country. Thirteen people were also convicted for their roles in the drug conspiracy, including doctors, pharmacists, a call-center manager and others.

- *United States v. Ihenacho* (District of Massachusetts). On February 17, 2012, Baldwin Ihenacho, a pharmacist and owner of the Meetinghouse Community Pharmacy in Dorchester, Massachusetts, was sentenced in federal court for conspiring to dispense prescription drugs as part of two Internet pharmacy operations, and laundering the money obtained from the illegal businesses. Ihenacho was sentenced to five years in prison to be followed by two years of supervised release. Ihenacho was one of several defendants convicted of charges relating to the dispensing of over one million misbranded prescription drugs for the rogue Internet pharmacies, Global Access and Golden Island, located in the Dominican Republic. The pharmacy was paid by foreign rogue Internet pharmacies to fill prescriptions for controlled substances and non-controlled substances by means that were outside the usual course of professional medical and pharmacy practice and not for a legitimate medical purpose. In some instances, drug orders were approved by doctors who were paid to review brief online medical questionnaires without ever having any contact with the customer; in other instances, without any doctor involvement at all. The pharmacy dispensed drugs, including controlled substances, in vials designed to appear as if they were dispensed pursuant to a valid

prescription, and shipped them to customers who were usually located in a different state than the pharmacy. The defendants dispensed, or caused to be dispensed, over one million pills, all without the required valid prescriptions.

QUESTIONS FOR THE RECORD—MR. BONNER

Question. In instances where there are allegations of pharmaceutical diversion involving pharmaceutical manufacturers, wholesalers, or distributors, those matters are typically addressed by DEA through administrative of civil proceedings. Isn't the DOJ treating non-registrants such as private package delivery companies worse by pursuing criminal investigations?

Answer. DEA is aggressively targeting the diversion of controlled substances, as well as those who facilitate their unlawful distribution. Decisions whether to pursue civil or criminal proceedings depend upon the circumstances of each case.

Question. Is the DOJ subjecting the United States Postal Service to the same scrutiny as private carriers?

Answer. DEA treats all violations of the Controlled Substances Act (CSA) equally, regardless of whether the violations are committed by a federal, state, or private entity.

Question. FedEx has publicly stated that if the DOJ will provide it the names of dispensing pharmacies that are operating illegally, the company will immediate cease doing business with those accounts. Why doesn't the DEA supply such a list to the package delivery companies?

Answer. We appreciate the concerns raised in this series of questions, and will continue to explore options to address them. However, it is not the role of the Department of Justice to announce publicly the names of criminal enterprises that might be using package delivery companies so that the package delivery companies can refrain from doing business with such criminal enterprises. As all citizens and businesses are entitled to due process of law, the Department of Justice cannot simply declare an entity to be operating illegally. For this reason and others, it is the policy of the Department of Justice to neither confirm nor deny the existence of any pending or ongoing investigations. This longstanding policy does not relieve a package delivery company from being subject to civil and/or criminal liability under the Controlled Substances Act and other federal laws, where otherwise appropriate.

Question. Package delivery companies are not required to register under the Controlled Substances Act, and are not part of the "closed system of distribution." The investigations of package delivery companies appear to be efforts by the DOJ to unilaterally subject private sector package carriers to a regulatory framework. Does that not require legislative action by Congress, and the development of regulations through notice and comment rulemaking that industry can follow?

Answer. Although package delivery companies are not DEA registrants, their conduct may subject them to civil and/or criminal liability under the Controlled Substances Act and other federal laws. For example, recently United Parcel Service, Inc. (UPS) was investigated for violating numerous laws, e.g., conspiracy, 18 U.S.C. 371, 21 U.S.C. 846, 18 U.S.C. 1956(h); distribution of controlled substances, 21 U.S.C. 841(a)(1); money laundering, 18 U.S.C. 1956 or 1957; and misbranding of pharmaceuticals, 21 U.S.C. 331, et seq. In March 2013, UPS and the United States Attorney's Office for the Northern District of California entered in to a Non-Prosecution Agreement. In this agreement, UPS agreed accept responsibility for its conduct, to forfeit $40 million in payments it has received from illicit online pharmacies, and to implement a compliance program designed to ensure that illegal online pharmacies will not be able to use UPS's services to distribute drugs.

QUESTIONS FOR THE RECORD—DR. HARRIS

Question. Please describe the official policy of the Department of Justice concerning the use of a personal, non-official email account to conduct official Department business, and provide any official direction, memorandum or guidance that documents that policy.

Answer. Please refer to the attached letter (figure 3) from the Department to Chairman Wolf and you dated July 2, 2013.

Question. During the hearing, I asked you about Assistant Attorney General Thomas Perez's use of a personal e-mail account to conduct official Department business and a subpoena issued to Mr. Perez by the House Committee on Oversight and Government Reform regarding this personal e-mail use. You testified that personal e-mail information requested in that subpoena had been provided the day before the hearing. I have subsequently become aware of a letter to you from the Chairman of the House Committee on Oversight and Government Reform dated April 18, 2013, which says Mr. Perez had not produced the e-mails required by the terms of the subpoena. According to the House Committee on Oversight and Government Reform, the subpoena requires the actual production of all personal e-mails used to conduct official

Figure 3: Letter to Mr. Wolf and Dr. Harris

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

July 2, 2013

The Honorable Frank Wolf
Chairman
Subcommittee on Commerce, Justice, Science
and Related Agencies
Committee on Appropriations
U.S. Congress
Washington, DC 20515

The Honorable Andy Harris
U.S. Congress
Washington, DC 20515

Dear Chairman Wolf and Representative Harris:

This responds to your letter to the Attorney General dated April 26, 2013, inquiring about the Department's response to a subpoena by the House Committee on Oversight and Government Reform for Assistant Attorney General Thomas E. Perez's emails.

The Department has made extraordinary efforts to accommodate the House Oversight Committee's interests in these emails, and we believe that we have fully addressed those interests. Mr. Perez has now searched his personal email account twice. First, he did so in response to the Committee's request for communications leading up to the City of St. Paul's decision to withdraw its Supreme Court petition in *Magner v. Gallagher*. When Mr. Perez identified one responsive email exchange—a communication from the City of St. Paul's outside attorney, and Mr. Perez's brief response—we immediately produced it to the House Oversight Committee. Mr. Perez then made further efforts to accommodate the Committee's stated concern about the Federal Records Act, searching his personal account for communications related to Department business during his three-year tenure as Assistant Attorney General. As we explained to the Committee, Mr. Perez periodically has found it necessary to send documents from his Department account to his home email address, to enable him to continue working after normal business hours.

In response to Chairman Issa's request, Mr. Perez identified approximately 1,200 communications on his personal account that related to Department business, which we have confirmed also had previously been sent to or from a Department email address. Thus, these were already captured by the Department's email system pursuant to the Federal Records Act.

Only 35 communications—just five of which Mr. Perez initiated—had not already been captured in the Department's email system. When he located these 35 communications, Mr. Perez forwarded them to a Department email address, ensuring that they are now in the Department's system. These 35 communications were made available for review by staff for the House Oversight Committee on April 17, 2013, as indicated in the Attorney General's testimony before you on April 18, 2013. We also provided staff of the House Oversight Committee access to all of the sender, recipient, and date fields for the remaining records. Those fields demonstrate that these communications were already captured on the Department's email system, pursuant to the Federal Records Act, prior to the House Oversight Committee's initial inquiry.

Your letter also asks about the Department's policies regarding personal email. The Justice Management Division has advised that, while employees generally may not set their Department accounts to automatically forward all emails to a private account, they are not prohibited from sending individual emails, at their discretion, from their DOJ accounts to a personal account.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

emails which the Department of Justice concedes is approximately 1,200 e-mails. Mr. Perez has not produced any e-mails and the Department of Justice has only allowed the House Committee on Oversight and Government Reform to review 32 of the e-mails at Department of Justice Headquarters. In light of that additional information, will you be amending your testimony to the Subcommittee?

Answer. Please refer to the attached letter (figure 3) from the Department to Chairman Wolf and you dated July 2, 2013.

QUESTIONS FOR THE RECORD—MR. GRAVES

Question. I'm upset that IRS thinks it doesn't need a warrant to get email content from communications service providers. I also saw a quote from the head of the FBI agents association, that the better practice is for law enforcement to get a warrant when it wants email content and that sounded right to me. Do you agree with me that getting a warrant for content (absent an emergency) is the better practice? In ordinary civil and criminal investigations, the Stored Communications Act (SCA) governs law enforcement's ability to obtain the contents of electronic communications such as email from service providers. The SCA, which is part of the Electronic Communications Privacy Act (ECPA), has a broad scope. It is a critical tool in a wide variety of criminal investigations, including those involving murder, kidnapping, organized crime, sexual abuse or exploitation of children, identity theft, and more. It also applies when the government is acting as a civil regulator or even as an ordinary civil litigant. Moreover, the statute applies not only to public and widely accessible service providers, but also to non-public providers, such as companies or governments that provide email to their employees.

Answer. The SCA permits public providers voluntarily to disclose to law enforcement the stored contents of communications in certain circumstances, such as emergencies endangering life or limb or when the sender or recipient of an email consents to the disclosure. The SCA also provides the mechanism for law enforcement to compel a service provider to disclose the stored contents of communications such as emails. In the wake of *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), the Department generally uses warrants based upon probable cause when it uses the SCA to compel public service providers to disclose the contents of email communications in the course of national security or law enforcement investigations.

The Department also believes that some of the lines drawn by the SCA that may have made sense in the past have failed to keep up with the development of technology and the ways in which individuals and companies use, and increasingly rely on, electronic and stored communications. The

Department thus looks forward to continuing to work with Congress, as it considers potential changes to ECPA, to ensure that the statute accounts for new and changing technologies, while maintaining protections for privacy and adequately providing for public safety and other law enforcement imperatives.

THURSDAY, MARCH 14, 2013.

DEPARTMENT OF JUSTICE

WITNESS

HON. MICHAEL E. HOROWITZ, INSPECTOR GENERAL, DEPARTMENT OF JUSTICE

OPENING STATEMENT

Mr. WOLF. The committee will come to order.

Our witness this morning is Mr. Michael Horowitz, Inspector General of the Department of Justice, who is appearing for the first time before this subcommittee. We want to welcome you.

This is the third hearing the subcommittee has had with inspectors general of the major entities under the subcommittee's jurisdiction. We have previously heard testimony from the inspectors general of the Department of Commerce and NASA. We appreciate the opportunity to hear about the important oversight work you are doing and your views on the top management challenges facing the Department.

Thank you for being here. We would like to highlight the issues contained in your September 2012 Semiannual Report to Congress. Members will have a number of questions, and I will just then go to Mr. Fattah for any comments.

Mr. FATTAH. It is going to be a busy day, so I will yield in terms of opening remarks, and we can just jump right to it.

Mr. WOLF. Pursuant to the authority granted in section 191 of Title II of the United States Code and clause 2(m)(2) of the House rule XI, today's witness will be sworn in before testifying. Please rise and raise your right hand.

[Witness sworn.]

Mr. WOLF. Let the record reflect that the witness answered in the affirmative, and you may proceed how you see fit and summarize. Your full statement will appear in the record. Thank you.

OPENING STATEMENT—MR. HOROWITZ

Mr. HOROWITZ. Thank you for inviting me to testify today. It has been 11 months since I was sworn in as the Inspector General at the Justice Department, and we have issued many significant reports during that time, including several that resulted in part from requests from members of this subcommittee.

One of the first reports that I issued as Inspector General was our review of improper hiring practices in the Justice Management Division, which was initiated as a result of information provided by the chair. Another important report involved the Department's handling of the Clarence Aaron clemency request, which Congressman Fattah requested that we investigate. And earlier this week

we issued a report on the Voting Section of the Civil Rights Division, which we initiated after requests by the chair and by Congressmen Aderholt, Bonner and Culberson, as well as several other Members of Congress.

In addition to these reviews, we completed our report on ATF's Operations Fast and Furious and Wide Receiver. We also issued more than 70 audits, including information security audits, grant recipient audits, and audits of State and local participants in the FBI's Combined DNA Index System.

Among the reviews we did were the Department's handling of suspension and debarment, the FBI's implementation of the Sentinel project, the FBI's forensic DNA case backlog, and the Executive Office of Immigration Review's management of immigration cases.

Our special agents made dozens of arrests for corruption and fraud offenses, and conducted investigations that resulted in well over 100 administrative actions against Department employees. And I'm particularly proud of having appointed the first-ever whistleblower ombudsperson for the Justice Department OIG. We must ensure that whistleblowers can step forward and report waste, fraud, and abuse without fear of retaliation.

While these past 11 months have seemed to me to be remarkably busy, I've learned that it is typical of the extraordinary work that the OIG's employees regularly produce. Over the past 10 fiscal years, the OIG has identified nearly $1 billion in questioned costs, far more than our budget during that same period. In addition we have identified over a quarter of a billion dollars in taxpayer funds that could have been put to better use by the Department.

As a result of sequestration, we received a 5 percent reduction to our base and are scheduled to receive an additional 2 percent reduction in fiscal year 2014. Because approximately 78 percent of our expenditures are related to personnel, this equates to a permanent reduction of approximately 30 FTEs. We have planned for sequestration for several months now, and therefore we are already 20 FTEs below our level from last year, approximately.

While reduced staffing inevitably will affect the number of audits and reviews we will be able to do in the future, I am confident that the OIG's dedicated professionals will continue to provide extraordinary service to the American public.

Regarding our plans for future work, this past November we released my first and the OIG's regular annual list of the Department's top 10 management challenges. Let me just briefly mention three of them.

First, safeguarding national security remains one of the highest priorities, and the OIG is conducting numerous reviews in this area. For example, we are examining the Department's coordination of its efforts to disrupt terrorist financing, to manage the consolidated terrorist watch list, and to use the FBI's Foreign Terrorist Tracking Task Force to help keep foreign terrorists and their supporters out of the United States.

Second, cybersecurity. That must be one of the Department's highest priorities. Computer systems in the public and private sector that are integral to the infrastructure, economy, and defense of the United States face a constant and rapidly growing threat of

cyberintrusion and attack. The OIG previously examined the operations of the Justice Security Operations Center and the National Cyber Investigative Joint Task Force, as well as the capabilities of FBI field forward offices to investigate national security cyberintrusion issues. We made a number of important recommendations, and we are currently evaluating reviews that we should undertake in this area.

Lastly, the Department is facing significant budget issues particularly with regard to the Federal prison system. The continually growing and aging Federal prison population consumes an ever-larger portion of the Department's budget. Fifty years ago the BOP's budget represented 14 percent of the Department's budget; today it represents 24 percent of the Department's budget. Despite this BOP budget growth, Federal prisons were 39 percent overrated capacity in fiscal year 2011, and BOP projects that number to increase in the years ahead. The Department must address this issue before it necessitates cuts to the budgets of other DOJ components.

In sum, the Department faces these and many other important challenges in the years ahead, and the OIG will continue to conduct vigorous and independent oversight. The Department is much more than just another Federal agency. It is a guardian of our system of justice and is responsible for enforcing our laws fairly, without bias, and, above all, with the utmost of integrity. The OIG plays a critical role in ensuring the fulfillment of that mission.

I look forward to working with the subcommittee, and I appreciate the opportunity to be here today, and I am pleased to answer any questions that you may have.

Mr. WOLF. Well, thank you.

[The information follows:]

Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies

concerning

Oversight of the Department of Justice

March 14, 2013

Mr. Chairman, Congressman Fattah, and Members of the Subcommittee:

Thank you for inviting me to testify about the activities and oversight work of the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ). It has been 11 months since I was sworn in as the Department's Inspector General, and it has been an extraordinarily busy 11 months for me and the Office. We have issued many significant reports during that time, and several of the most important ones were based in part upon requests from Members of this Subcommittee.

One of the first reports that I issued as Inspector General was our report on improper hiring practices in the Justice Management Division (JMD), which was initiated as a result of information provided to us by the Chairman. We not only corroborated this information but found numerous problems with nepotism in multiple offices in JMD. Our findings are particularly concerning given that the OIG had twice before issued reports involving improper hiring practices in JMD (in 2004 and 2008). We found that eight current or former JMD officials – many holding senior positions – violated applicable statutes and regulations in seeking the appointment of their relatives to positions within JMD. The OIG also found that a Deputy Assistant Attorney General in JMD responded inadequately to warning signs she received concerning the hiring of relatives of JMD employees. We made a number of stringent recommendations in an effort to ensure that these problems were finally remedied and that we do not need to issue a fourth report on the subject.

Another important report involved our review of the Department's handling of the Clarence Aaron clemency request, which Congressman Fattah requested that we investigate. We found that the Department's Pardon Attorney did not accurately represent material information to the White House in recommending that the President deny Aaron's clemency petition. We referred the findings regarding the Pardon Attorney's conduct to the Office of the Deputy Attorney General for a determination as to whether administrative action is appropriate, and we recommended that the Office of the Pardon Attorney review its files to determine if similar events occurred with respect to other cases.

And on Tuesday of this week, we issued a report on the Voting Section of the Civil Rights Division, which we initiated after requests by the Chairman, Congressmen Aderholt, Bonner, and Culberson of this Subcommittee, and other Members of Congress. We found significant differences between administrations in enforcement priorities, but we did not uncover evidence sufficient to conclude that enforcement decisions were based on race or partisan considerations under the past or current administrations. We did, however, raise questions about the handling of some of those cases, including the New Black Panther Party matter that we believe contributed to the

appearance of politicization of the work of the Voting Section. In addition, we found numerous and troubling examples of harassment and marginalization of employees and managers, as well as the unauthorized disclosure of confidential information, that appeared to result from ideological divisions within the Section. We believe such conduct is incompatible with the proper functioning of a component of the Department of Justice. The report also analyzed allegations of partisanship in both the hiring of experienced attorneys to work in the Voting Section under the current administration and in the prioritization of responses to records requests about voting matters. We did not find sufficient evidence to support these allegations. However, we did identify a number of issues and we made several recommendations to assist the Department in addressing these matters.

In addition to these reports that several Members of this Subcommittee requested, we completed our report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious and Operation Wide Receiver, which consumed a substantial amount of my first five months in office and which resulted in very important and troubling findings. The report detailed a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations, as well as the Department's response to Congressional inquiries about those flawed operations. The OIG will closely monitor the Department's progress in implementing the recommendations we made in our report.

Additionally, there are the reports that do not necessarily make the headlines but that help make the operations of the Justice Department more effective and efficient, and that result in important savings of taxpayer dollars. For example, in my 11 months as Inspector General, we issued more than 70 audits, which included annual financial statement audits, information security audits, audits of grant recipients, and audits of state and local participants in the Federal Bureau of Investigation's (FBI) Combined DNA Index System (CODIS). Further, we issued reports on the Department's handling of suspension and debarment, the FBI's implementation of the Sentinel project, the FBI's handling of its forensic DNA case backlog, the U.S. Marshals Service's (USMS) management of its procurement activities, the Executive Office of Immigration Review's management of immigration cases, and the FBI's activities under Section 702 of the FISA Amendments Act. Additionally, during this time, our Investigations Division received approximately 10,000 complaints, had dozens of arrests and convictions involving corruption or fraud offenses, and investigated allegations that resulted in well over 100 administrative actions against Department employees.

I am also particularly proud of having appointed the DOJ OIG's first-ever whistleblower ombudsperson, and I am committed to ensuring that whistleblowers in the Department can step forward and report fraud, waste, and abuse without fear of retaliation. During my tenure, I have seen first-hand

the important role that whistleblowers play in advancing the OIG's mission to address wasteful spending and improve the Department's operations. We will do all we can to ensure that we are responsive to complaints that we receive, and that we ensure that allegations of retaliation are thoroughly and promptly reviewed.

While these past 11 months have been a remarkably busy time, they are typical of the extraordinary work that the DOJ OIG regularly produces, and it is indicative of the return on investment that the taxpayers receive from our office. Indeed, over the past 10 fiscal years, the OIG has identified nearly $1 billion in questioned costs – far more than the OIG's budget during the same period. In addition, we have identified over $250 million in taxpayer funds that could be put to better use by the Department, and our criminal and administrative investigations have resulted in the imposition or identification of more than $65 million in fines, assessments, restitution, and other recoveries over that period.

We have accomplished these results over the past 10 years by being very productive because, while our FTE has increased by more than 9 percent, from approximately 400 to 437, the Department's FTE has increased almost 25 percent from approximately 90,400 to 112,800. As a result of sequestration, we have received a 5 percent reduction to our base this fiscal year, and are scheduled to receive an additional 2 percent reduction in FY14. Because 78 percent of our expenditures are related to personnel, this equates to a permanent reduction of approximately 30 FTEs. As you would expect from careful stewards of taxpayer money, we have been planning for the possibility of sequestration for several months. As a result we already are 20 FTEs below our FTE hiring level from last fiscal year, and we expect to further restrict our spending for the remainder of the fiscal year in order to meet the budget reduction. That will require us to restrict travel and will likely mean that we conduct fewer audits and investigations given our reduced staffing levels, but I am confident that the dedicated professionals in the DOJ OIG will continue to provide extraordinary service to the American public.

Future Work and Top Challenges Facing DOJ

Now that I have outlined for you what we have done during the past year, let me look forward to our future work.

Each year since 1998, the OIG has compiled a list of top management and performance challenges for the Department of Justice for use by the Attorney General and top DOJ officials. We identified the major challenges for the Department in 2013 as Safeguarding National Security, Enhancing Cyber Security, Managing the Federal Prison System, Leading the Department in an Era of Budget Constraints, Protecting Civil Rights and Civil Liberties, Restoring Confidence, Coordinating Among Law Enforcement Agencies, Enforcing Against

Fraud and Financial Offenses, Administering Grants and Contracts, and Ensuring Effective International Law Enforcement. In my testimony today, I will highlight a few of the top management and performance challenges for the Department that we identified during this past year based on our oversight work, research, and judgment. The full list of top challenges facing the Department, along with a detailed discussion of our assessment of each, is available on our website at http://www.justice.gov/oig/challenges/2012.htm.

Overall, I believe that the Department has made progress in addressing many of its top challenges, but significant and immediate improvement is still needed in some crucial areas.

National Security Remains a Top Challenge

Safeguarding national security has appropriately remained the Department's highest priority and the focus of substantial resources. Yet the OIG's oversight has consistently demonstrated that the Department faces many persistent challenges in its efforts to protect the nation from attack.

One such challenge is ensuring that national security information is appropriately shared among Department components and the intelligence community so that responsible officials have the information they need to act in a timely and effective manner. The OIG is currently conducting numerous reviews in this area. For example, we are examining the Department's coordination of its efforts to disrupt terrorist financing, to manage the consolidated terrorist watchlist, and to use the FBI's Foreign Terrorist Tracking Task Force to provide information that helps keep foreign terrorists and their supporters out of the United States or leads to their removal, detention, prosecution, or other legal action. Each of these critical functions requires careful coordination between Department components and with other agencies to ensure that the Department has every opportunity to prevent terrorist attacks before they occur.

In addition to the challenges of information sharing, the Department faces the challenge of ensuring the appropriate use of the tools available to its personnel responsible for monitoring and detecting national security risks and threats. The importance of this challenge was demonstrated by our prior OIG reviews assessing the FBI's use of national security letters (NSLs), which allow the government to obtain information such as telephone and financial records from third parties without a court order. These reviews found that the FBI had misused this authority by failing to comply with important legal requirements designed to protect civil liberties and privacy interests, and we therefore made recommendations to help remedy these failures.

The FBI has implemented many of these recommendations and continues to make progress in implementing others. However, some

recommendations remain outstanding, and we are now conducting our third review of NSLs to assess the FBI's progress in responding to those recommendations and to evaluate the FBI's automated system for tracking NSL-related activities and ensuring compliance with applicable laws. This review also includes the OIG's first review of the Department's use of pen register and trap-and-trace devices under the *Foreign Intelligence Surveillance Act* (FISA).

On a related note, the OIG also recently completed its review of the Department's use of Section 702 of the *FISA Amendments Act* (FAA), which culminated in a classified report released to the Department and to Congress. Especially in light of the fact that Congress recently reauthorized the FAA for another five years last session, we believe the findings and recommendations in our report will be of continuing benefit to the Department as it seeks to ensure the responsible use of this foreign intelligence tool.

Cyber Security is of Increasing Importance

The Department and the Administration have also increasingly turned their attention to the fast-increasing problem of cyber security, which has quickly become one of the most serious threats to national security. Computer systems that are integral to the infrastructure, economy, and defense of the United States face the constant and rapidly growing threat of cyber intrusion and attack, including the threat of cyber terrorism. The Department also faces cyber threats to its own systems.

While the number of cyber security incidents directly affecting the Department remains classified, a recent study by the Government Accountability Office (GAO) found that the number of such incidents reported by federal agencies increased by nearly 680 percent from 2006 to 2011. The Department will continue to face challenges as it seeks to prevent, deter, and respond to cyber security incidents – both those targeting its own networks and those that endanger the many private networks upon which the nation depends.

In recognition of this trend, the Department has identified the investigation of cyber crime and the protection of the nation's network infrastructure as one of its top priorities. The Department has sought to strengthen cyber security by responding to recommendations made in OIG reports relating to cyber security, including our September 2011 report examining the operations of the Justice Security Operations Center, and our April 2011 audit report assessing the National Cyber Investigative Joint Task Force and the capabilities of FBI field offices to investigate national security cyber intrusion cases.

However, the challenges posed by cyber crime multiply as cyber threats grow in number and complexity. Of central importance to any cyber security strategy is working effectively with the private sector. The Department must not only encourage the private sector to invest in the security of its own networks, but it must also conduct aggressive outreach to assure potential victims of cyber crime that proprietary network information disclosed to law enforcement will not become public. Even a modest increase in the rate at which cyber crimes are reported would afford the Department invaluable opportunities to learn the newest tactics used by an unusually dynamic population of criminals and other adversaries, and to arrest and prosecute more perpetrators.

Cyber intrusion and attack also pose risks to the security of the Department's information, the continuity of its operations, and the effectiveness of its law enforcement and national security efforts. The Department consequently faces the challenge of protecting its own systems, including systems that protect its sensitive and classified information. Partly in response to the highly publicized 2010 incident in which an Army intelligence analyst admittedly provided classified combat footage and hundreds of thousands of classified State Department documents to a website devoted to publishing secret information, news leaks, and classified media from anonymous sources, the President issued an executive order requiring a government-wide program for deterring, detecting, and mitigating insider threats. As a result, in March 2012 the Department established an Insider Threat Detection and Prevention Working Group. The Department plans to issue a strategy and guidance on how components should implement an insider threat program and to provide training on insider threats.

The Department Must Address its Growing Cost Structure, Particularly the Federal Prison System

The current budgetary environment also presents critical challenges for the Department. Of particular importance, the Department's mission has remained substantially unchanged since 2001 even as the budgetary environment in which the Department operates has changed dramatically. It now appears likely that Department leadership will face the significant challenge of fulfilling this mission without the assurance of increased resources in coming years.

The Department has taken some initial steps to reduce its budget. However, the Department proposed approximately $228 million in program increases for FY 2013. We acknowledge that these increases are intended for such critical activities as financial and mortgage fraud, civil rights, cyber security, intellectual property, transnational organized crime, and immigration services, as well as to ensure prisoners and detainees are confined in secure facilities and to improve federal prisoner reentry. Each of these areas merits

additional attention from the Department. But that is the point: even in an era of constrained budgets, the demands on the Department continue to grow. The Department must therefore have in place an innovative and transparent strategic vision for how to fulfill its mission in the long term without requiring additional resources.

Nowhere is this problem more pressing than in the federal prison system, where the Department faces the challenge of addressing the growing cost of housing a continually growing and aging population of federal inmates and detainees. The federal prison system is consuming an ever-larger portion of the Department's budget, making safe and secure incarceration increasingly difficult to provide, and threatening to force significant budgetary and programmatic cuts to other DOJ components in the near future. In FY 2006, there were 192,584 inmates in BOP custody. As of October 2012, the BOP reported 218,730 inmates in its custody, an increase of more than 13 percent. Not surprisingly, these trends mirror the increased number of federal defendants sentenced each year, which rose from approximately 60,000 in FY 2001 to more than 86,000 in FY 2011, according to the U.S. Sentencing Commission.

The Department's own budget reports demonstrate the fundamental financial challenges facing the Department. Fifteen years ago, the BOP's enacted budget was $3.1 billion, which represented approximately 14 percent of the Department's budget. In comparison, the Department has requested $6.9 billion for the BOP in FY 2013, or 26 percent of the Department's total FY 2013 budget request. Moreover, the President's FY 2013 budget projects the budget authority for federal correctional activities to rise from $6.9 billion to $7.4 billion by 2017.

The Department has been aware of the problems associated with a rapidly expanding prison population for years. The Department first identified prison overcrowding as a programmatic material weakness in its FY 2006 Performance and Accountability Report, and it has been similarly identified in every such report since. In fact, prison overcrowding was the Department's only identified material weakness last year. To reduce overcrowding in existing federal prisons as the inmate population continues to grow, the BOP has contracted with private sector, state, and local facilities to house certain groups of low-security inmates, and it recently purchased an existing state facility. The Department also has expanded existing federal facilities, and the GAO recently reported that from FY 2006 through FY 2011 the BOP increased its rated capacity by approximately 8,300 beds as a result of opening 5 new facilities.

Yet despite this increase in bed space since FY 2006, and despite the growth in BOP budget authority from approximately 22 percent of the DOJ budget in FY 2006 to the requested 26 percent in FY 2013, conditions in the

federal prison system continued to decline. Since FY 2000, the BOP's inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2013. Since FY 2006, federal prisons have moved from 36 percent over rated capacity to 39 percent over rated capacity in FY 2011, with medium security facilities currently operating at 48 percent over rated capacity and high security facilities operating at 51 percent over rated capacity. Moreover, the Department's own outlook for the federal prison system is bleak: the BOP projects system-wide crowding to exceed 45 percent over rated capacity through 2018.

Whatever approach the Department wishes to take to address the growing cost of the federal prison system, it is clear that something must be done. In an era where the Department's overall budget is likely to remain flat or decline, it is readily apparent from these figures that the Department cannot solve this challenge by spending more money to operate more federal prisons unless it is prepared to make drastic cuts to other important areas of the Department's operations. The Department must therefore articulate a clear strategy for addressing the underlying cost structure of the federal prison system and ensuring that the Department can continue to run our prisons safely and securely without compromising the scope or quality of its many other critical law enforcement missions.

There are many approaches available to the Department for cutting its costs. Among them, it could redouble its efforts to adopt and implement OIG recommendations designed to reduce costs. As of September 2012, 819 OIG recommendations to the Department remained open, including many recommendations that could lead to substantial cost savings, and our FY 2012 audits and related single audits identified approximately $25 million in questioned costs that the Department should make every effort to resolve and, if necessary, recover. The Department should also focus on getting more for its spending. For example, numerous OIG audits in recent years have identified ineffective spending on large information technology projects. The Department must focus on avoiding similar problems in the future.

The Department should also continue to strengthen its efforts to collect criminal penalties, civil judgments, and other funds owed to the Department, while also ensuring that enforcement efforts across its components and sub-components remain equally and appropriately vigorous. In FY 2011, for example, the U.S. Attorneys' Offices collected $6.5 billion in criminal and civil actions – $2.7 billion in restitution, criminal fines, and felony assessments, and $3.8 billion in individually and jointly handled civil actions – as well as an additional $1.68 billion collected through asset forfeiture actions in partnership with other divisions and agencies. However, at the end of FY 2011, the U.S. Attorneys' Offices reported an ending principal balance of nearly $75 billion relating to criminal and civil actions that remained uncollected. In

addition, collection efforts may vary substantially among the U.S. Attorneys' Offices.

Leading the Department in this climate of budget constraints will require careful budget management and significant improvements to existing operations. Discrete operating efficiencies are unlikely to fully address the significant challenges of moving the Department from an era of expanding budgets into an era of budget constraints without sacrificing its mission. It is therefore incumbent upon the Department to plot a new course for the current budgetary environment, one that streamlines the Department's operations while simultaneously taking on the most important and fundamental questions about how the Department is structured and managed.

The Department Must Continue to Focus on Maintaining the Public's Trust and Confidence

The Department must ensure that it strengthens and maintains the public's trust in its fairness, integrity, and efficiency. Several recent and ongoing OIG reviews have demonstrated the Department's challenges in doing so.

We have completed many of these reviews in my first 11 months as Inspector General, including this week's report assessing the operations of the Voting Section of the Civil Rights Division, which documented a disappointing lack of professionalism by some Department employees over an extended period of time, during two administrations, and across various facets of the Voting Section's operations. Our review of ATF's Operations Wide Receiver and Fast and Furious provides another example, as that review determined that the investigations profiled in our report were plagued by several systemic problems, including inadequate attention to public safety, a lack of sufficient supervisory controls and oversight from ATF Headquarters, inappropriate use of cooperating federal firearms licensees, and a failure to coordinate with other law enforcement agencies. This review also found that the Department responded to a congressional inquiry about ATF firearms trafficking investigations with inaccurate information. Other examples from my tenure as Inspector General include our investigation into improper hiring processes within JMD – our third such investigation of JMD in the last 8 years – and our recent report on the Department's handling of Clarence Aaron's clemency petition. Incidents such as these tarnish the Department's reputation for fairness, integrity, and effectiveness, and they greatly enhance the need to focus on restoring the public's confidence in the Department's operations.

In addition to the reviews we recently completed, the OIG is closely monitoring other matters capable of affecting the public's trust and confidence in the Department. For example, the OIG is examining the effectiveness of the

discipline system used by U.S. Attorneys' Offices and the Executive Office for U.S. Attorneys when investigating allegations of employee misconduct. This review is the sixth OIG review since 2001 to assess a component's disciplinary system. Previous OIG evaluations examined the disciplinary systems of the USMS, BOP, DEA, ATF, and FBI and made many recommendations to these components. But the Department faces a broader challenge than simply ensuring that individual components maintain internally consistent and effective disciplinary system: it must also ensure that disciplinary procedures remain consistent across components so that all of the Department's employees, attorneys and non-attorneys alike, are held to the same tough but fair standards.

Another crucial aspect of maintaining the public's confidence is protecting the legal rights of those employees who report waste, fraud, abuse, and mismanagement. Whistleblowers play a crucial role in ensuring accountability of government, yet they are too often subject to retaliation for their disclosures. The OIG has conducted numerous investigations into allegations of retaliation, and we recently appointed an OIG Whistleblower Ombudsperson responsible for, among other things, ensuring that complaints of retaliation within the OIG's jurisdiction are reviewed and addressed in a prompt and thorough manner, and for communicating with whistleblowers about the status and resolution of such complaints. The OIG will continue to monitor this important issue.

Coordination Among Law Enforcement Agencies, Both Domestically and Internationally, Remains a Challenge

Law enforcement represents a central element of the Department's mission, yet the ability and willingness of Department components to coordinate and share intelligence, resources, and personnel with one another and with other law enforcement agencies pose many significant challenges.

One challenge is the confusion created when components have overlapping jurisdictions. The Department has four primary law enforcement agencies – the FBI, Drug Enforcement Administration (DEA), ATF, and USMS – yet these components' jurisdictions are not exclusive. Some overlap between these four components is unavoidable and may even help ensure proper law enforcement focus and attention. However, the Department should clarify the jurisdictional boundaries of each component wherever possible, and it may also benefit from considering whether consolidation of any operational functions or administrative functions, such as information technology, human resources, budgeting, and records management, could yield operational benefits, improve law enforcement safety, or save costs. Similarly, the Department should consider ways to increase the sharing of lessons learned and best practices among law enforcement components.

The Department must also ensure that its law enforcement components have the proper level of consistency in their standard procedures, protocols, and manuals. While the Department's law enforcement components generally adhere to the Attorney General's Guidelines and policies for law enforcement activities, specific protocols and procedures for particular investigative techniques often vary from component to component, and for certain investigative activities, uniform Department guidance and improved oversight is needed. In particular, our review of new policies ATF implemented after Operation Fast and Furious underscored the agency's delay in completing its integration into the Department and in implementing controls to protect the public that were used in other Department law enforcement components. For example, we found that ATF had not until recently used review committees to evaluate either its undercover operations or its use of high-level and long-term confidential informants, and that its confidential informant policies were not revised to conform to the Attorney General's Guidelines Regarding the Use of Confidential Informants until 8 years after ATF joined the Department. We believe that Department-led, cross-component assessments designed to compare the law enforcement components' policies could identify opportunities for improvements that would make the Department's law enforcement operations more consistent and efficient.

The challenge of coordinating law enforcement functions also extends to international crime, which is becoming more sophisticated and widespread in light of evolving communications technologies, the global banking system, and porous borders in international conflict zones. To address this issue, the DEA, FBI, ATF, and USMS have stationed personnel abroad who work with their foreign counterparts to investigate and prosecute violations of U.S. law. These resources must be well managed and efficiently coordinated with each other. They must also be coordinated with both domestic and foreign law enforcement organizations, which requires putting agreements and frameworks in place before joint investigations begin, including clear lines of investigative authority among law enforcement agencies, appropriate mechanisms to share foreign intelligence both inside and outside the Department, and appropriate and consistent training of all personnel involved in international operations. Addressing these challenges will greatly enhance the Department's ability to fight crime at home and abroad.

In addition to robust partnerships with foreign allies, effective and efficient international law enforcement requires cooperation and coordination with other federal agencies. For example, our examination of Operation Fast and Furious raised questions about how information was shared among various offices of ATF, the DEA, and the FBI. We also saw coordination and information sharing issues between ATF and U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security. Our report noted instances where ATF resisted ICE conducting any independent or coordinated investigations that were related to Operation Fast and Furious

through recovered firearms. In light of ICE's jurisdiction over export violations involving munitions and firearms, close coordination with ICE was essential in an investigation that purported to target a cartel in Mexico and had as a goal identifying the border crossing mechanism the cartel was using to obtain firearms from the United States.

Conclusion

In sum, the Department has made progress in addressing many of the top management challenges the OIG has identified and documented through its work, but improvements are needed in important areas. These issues are not easily resolved and will require constant attention and strong leadership by the Department. To aid in this effort, the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

In concluding, I want to address a question that I frequently have been asked: why I left private practice after 10 years to return to the Justice Department to become the Inspector General. For me, the answer to that question is easy: I returned because of my love for public service and our country, and because of my deep commitment to the mission of the Department of Justice, where I served as a prosecutor for over 11 years. The Department is much more than just another federal agency. It is a guardian of our system of justice and is responsible for enforcing our laws fairly, without bias, and, above all, with the utmost of integrity. The Inspector General plays a critical role in fulfilling that mission, and every day that I go to the office, I have an opportunity to serve the American public by improving the effectiveness of this vitally important institution.

This concludes my prepared statement, and I would be pleased to answer any questions.

FBI RELATIONS WITH CAIR

Mr. WOLF. You know, I appreciate your service, too. I just wanted to say, when I saw you came on, I saw the article, and I saw how much you were making at the law firm that you left. I mean this seriously. I think it is an attitude to public service, that you are not here for the money, but for justice—the Biblical, "Justice, justice thou shall pursue."

I do appreciate the work, and I think since you have been there, we have had great cooperation. Not that everything you say I completely agree with. Maybe it's different. But it has been good to have you there, and I just appreciate your service.

As you know, I have urged you to pursue the compliance of the FBI officials in the field with the policies established by the FBI headquarters regarding interaction with the Council on American Islamic Relations, CAIR. As you know, CAIR was identified as an unindicted coconspirator in the Holy Land Foundation terrorism case, and for the last few years the FBI has forbidden any non-investigative cooperation with the organization, yet we continue to hear allegations of violations to this policy.

I understand that your work on this is ongoing. Can you speak about what you're looking at, and why, and where, and about how soon you think we might see something?

Mr. HOROWITZ. Yes. We did undertake a review just prior or just about the time I started last March and April. We have looked at, and are looking at, several of the allegations that have been brought to our attention about the FBI's interaction with CAIR and whether those were consistent with or not consistent with the FBI's policy.

We are drafting our final report, and I hope within the next few months, couple of months to be able to issue that report. It will likely be classified at some level, but we are hoping to make as much public as we can and obviously send to the Congress both the classified and the unclassified version.

JUSTICE MANAGEMENT DIVISION HIRING PRACTICES

Mr. WOLF. Okay. I have some other questions, but based on that, I'll just kind of move on.

On the nepotism issue, I'd like to discuss the important work your office has done to follow up on the whistleblower allegations I forwarded to you on nepotism in hiring decisions at the Justice Management Division. Could you describe what your investigation uncovered? How many violations did you find, and what was the nature of the violations?

Mr. HOROWITZ. Yes. We found in particular eight employees specifically, but many other instances beyond that, of hiring that was not consistent with and that in many instances violated Federal hiring rules. It was widespread. It was disappointing to see, particularly since we have done two prior reports in this area in 2004 and 2008.

We felt that we needed to make particularly stringent recommendations here, including requiring certification in certain instances, and make other steps—take other steps at JMD, the Jus-

tice Management Division, to ensure we didn't have to do a fourth report in this area.

We have referred those matters to the Department. My understanding is JMD, the Justice Management Division, has taken those seriously. They're in the process of proceeding on disciplinary matters as to the individuals that we identified.

We have, I can tell you, received very strong response from the Justice Management Division to our recommendations, and to interacting with us, and to reporting to us other allegations that they have found in the course of their reviews. So that our sense is from dealing with top management that they are truly taking to heart our report and trying to get to the bottom of this.

Mr. WOLF. You have anticipated the next question about that, so I'll move on from that.

UNICOR

UNICOR—and you've referenced the prison system—falls under Federal Prison Industries, which is critical to prisoner rehabilitation, providing meaningful work opportunities that improve the operation of secure prisons and reduce recidivism by allowing inmates to acquire work skills. You can't put a person away for, you know, 15 or 20 years and give them no training, no skill, no rehabilitation, no training insofar as to what they're going to do when they come out.

While the Federal prisoner population, as you said, has been increasing, the number of inmates employed by UNICOR continues to drop. Our committee, both sides, authorized the creation of a pilot program to allow prisoners to make products no longer made in the United States.

I understand you're auditing UNICOR. Can you tell the committee about the nature of this audit and any additional comments you may have about the viability of UNICOR? I think if you were to ask everybody out here how many baseball caps they own, probably some would own 10 or 15. We have five kids with baseball caps of every different kind all over the house and everything else. All of my grandkids have different caps from their schools and their Rinky Dinky Day School cap and everything else going on.

I think there are only two American cap manufacturers left. I was in a national park, and I bought my wife a cap. It was in California, Yosemite, and the cap was made outside; China, I believe. So we put language in to allow UNICOR to sort of be, quote, "the baseball cap manufacturer for the Park Service." Every agency, FBI has caps; BLM, Bureau of Land Management has caps; Secret Service has caps; ATF has caps; Penn State has caps; Notre Dame has caps; Temple has caps. Everyone has caps. High schools. We can't get this done. And there would be an opportunity to develop a cooperative relationship with the one or two—I think the last one, Mr. Bonner, may be in Alabama. And I think they want to continue.

So why couldn't you just, if I'm right, the Alabama one or the Buffalo one, develop whereby these men and women could begin working on caps? T-shirts, too. But we can't get anything done. And so what are the number in UNICOR today? What do you see hap-

pening? And do you have any thoughts about looking in why they can't do this?

Mr. HOROWITZ. And our audit is far along at this point, and we are seeing the declining trend in the number of inmates who are involved in UNICOR.

Mr. WOLF. How much is the decline?

Mr. HOROWITZ. Very substantial. I don't have the numbers with me, but it's a very substantial decline over time. And I understand the importance of UNICOR to prisoners, to undertaking giving them an opportunity to do work. That's part of what we're looking at in getting an evaluation of as we look at this audit and getting an understanding of.

So, again, I anticipate—my sense is likely by the summer we will have a report completed on the our UNICOR review. And it is looking at what has happened over time, and how has this decline occurred over time, and why, what are the reasons why.

Mr. WOLF. Isn't this about rehabilitation? The studies show the people who work while in prison, one, they earn some money that they can use while in prison; two, they earn money they can send to their families; and three, there could be an element of restitution, if you will.

Are you going to look at whether there's a rehabilitation issue with regard to that?

Mr. HOROWITZ. We haven't done work on what are the comparable recidivism rates, for example, between those who were in UNICOR and those who weren't. We haven't ourselves done that. I'd have to go back and look, but I believe we've looked at or may cite to studies that undertake that issue. That would be slightly different from what we did here, but it's certainly something that we can think about for a subsequent or separate review from that.

Mr. WOLF. You could also look at the issue of—and I think organized labor would support this, too, because if you had to drop the fabric by to the prison, that may be a unionized truck driver that's driving it. So I think everyone gains. And yet we failed. I mean, I think the committee put language in. We just haven't been—whether there is the reluctance on the part of the administration or whatever the case may be.

And also in fairness, this Congress has not been very, very good. We have had some votes where the Congress has wounded the prison industries program. So I felt that if you could look at this by having them make products that are no longer made in the United States, so we're not competing with the furniture manufacturers, we're not competing with anybody else. But if they could develop relationships with industries that we—we started calling it Operation Condor. In California, they brought the condor back, if you will. Bring back some of these industries that are no longer—like there's no longer a television set made in the United States. If you could do some things like this, but then have jobs and skills. So if you could look at that, I would appreciate it.

The last one, and then I will go to Mr. Fattah.

PRISON VIOLENCE

In August, the Department issued the final rule under PREA, prison rape; to detect, prevent, and punish prison rape. I think it's

important for people to know there are a lot of men and women in prison who are raped. A lot.

The failure of this administration to come out with these things—this was Congressman Bobby Scott's bill, and Senator Kennedy on the Senate side working with Chuck Colson and the Prison Fellowship. But PREA, to detect, prevent, and punish prison rape.

What are the audit requirements in the final standards? And what role will your office play in auditing compliance with the rule? And what other work do you expect to undertake with regard to PREA?

Mr. HOROWITZ. Well, let me first begin by stating how important I understand that the PREA rules to be and the statute and the regulations that go with it. I've had some discussions in the past with individuals who are involved in the Commission and the work that was done. And it is a very——

Mr. WOLF. Judge Walton was——

Mr. HOROWITZ. It's a very important issue, and it's an issue that we will take and are going to take seriously.

We have set up, as required, separate reporting lines, anonymous reporting lines, if you will, for prisoners to the OIG directly for inmate-on-inmate abuse, as well as staff-on-inmate abuse. As I'm sure you're aware, for many years we have been very aggressive in pursuing staff on inmate abuse.

Mr. WOLF. And how many have you seen on that?

Mr. HOROWITZ. Well, we've gotten so far, I'm told, 100 or more; since the rules went into effect, at least 100 complaints come in. We currently have at least 16 active investigations going on.

Mr. WOLF. Prisoners?

Mr. HOROWITZ. I don't know. I didn't break it out that way. So I can get back to you on that.

But those are just in, obviously, the Federal prisons that we have authority over. We don't have authority, obviously, to investigate allegations involving State facilities. But that's where, obviously, future audits can come in, from our standpoint, in reviewing not only compliance by the BOP with the rules that have been put in place, which obviously is of primary importance at the Justice Department, but also, given the grant money and the other oversight responsibilities that the Justice Department has for enforcing and overseeing the PREA rules, that's certainly something I'm interested in following up on, or doing an audit of once, obviously, there has been sufficient time passed for the rules to have gone in place so that there is something auditable and enough data there that we can do an effective audit. And given the rules came into effect at the end of last summer, we obviously would want to let some period of time go before we audit to determine whether implementation has been effective.

Mr. WOLF. So how would you have a telephone hotline? I mean, if you're in a prison up in the Harrisburg area or something, how would you call in? How will you do that?

Mr. HOROWITZ. Well, we have—we've worked with the prison facilities——

Mr. WOLF. Because there is punishment sometimes for the prisoner. There is punishment by the other prisoners.

Mr. HOROWITZ. Correct.

Mr. WOLF. You know, there are some people who are controlled. And then there's punishment sometimes by the staff. We—I met with young women who had been assaulted by their own guards. So how do you do that? How will they report? Because if there is not access to a telephone, you can't just go and—I mean, every call is monitored appropriately. How will you do that?

Mr. HOROWITZ. Well, they are required actually under the rules to have set up lines that will allow them to reach out to us at the Federal prisons, to reach out directly to the OIG.

Mr. WOLF. Do you have phones directly in?

Mr. HOROWITZ. We have a separate line directly into our office.

Mr. WOLF. How many calls have you had so far?

Mr. HOROWITZ. I don't know the number of calls. I believe we've had at least 100 complaints.

Mr. WOLF. All from Federal prisons?

Mr. HOROWITZ. This is Federal prisons.

Now, those complaints, when I mention complaints coming in, some inmates may be using those calls for other allegations beyond PREA-related allegations. But we have set up the lines, and inmates are able to report to us anonymously or not anonymously if they like.

Mr. WOLF. Can you offer some of the comments or——

Mr. HOROWITZ. Well, to be honest, given the number of cases that we saw before that and that we aggressively pursued, we do a number of sex-related offense cases involving the BOP, and we have done it for many, many years. So I'm not sure I could say, frankly. It surprised me. It perhaps has resulted in more complaints. The number has increased. But our office has done a lot of these cases in the past. They are very hard to do. We have pushed very hard for prosecutors to take the cases.

Mr. WOLF. Has there been prosecution of both prisoners and staff?

Mr. HOROWITZ. Yes, there have been, and I will forward to the committee. We can pull together some examples of what we've done in that area on the Federal side in terms of Federal prosecutions.

Mr. WOLF. Are all the Federal prisons—the wardens making this clear that this is the policy? Is it clear that in prison X in wherever that there's no misunderstanding?

Mr. HOROWITZ. Well, certainly that would be an area follow-up for our audit, which is have you implemented the PREA rules, and what have you done to implement them? So that's certainly something we would consider.

Mr. WOLF. I think Bobby Scott—anything you tell us, if you would tell him, Mr. Scott is on the Judiciary Committee.

So anyway, with that, Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

Let me start by welcoming you again to the committee. The chairman said he was out at the national park. I was at the best national park. I was at Gettysburg with my 14-year-old. She's doing a school project.

Mr. WOLF. Will the gentleman yield? I just hope the State of Virginia doesn't allow a gambling casino at Gettysburg, because there is a group trying to put a gambling casino just outside the park. So I agree, that is the best, but I hope they don't——

Mr. FATTAH. I don't think the Commonwealth will allow that to happen. Hopefully not.

All I can tell you is that the Chairman gave a lot of credit to others in this prison rape thing; you know, Senator Kennedy and Bobby Scott. But one of the true champions of this has been our own chairman. And it's one of these subjects where you don't win any votes. This is just the right thing to do. And I want to appreciate the fact that you stayed on this, and I'm glad that the rulemaking process has moved along.

Now, in your testimony you say that national security obviously is the most substantial challenge of the Department, and that there are a lot of issues going forward that you are doing work on, and particularly around this issue of sharing information.

I went out to the Terrorist Screening Center out in Virginia. Is it Vienna?

Mr. WOLF. Yes.

TERRORIST SCREENING CENTER

Mr. FATTAH. And I saw just an extraordinary level of cooperation between all of the DOJ elements along with others. So when you're outlining in your testimony your concern around the sharing of information, people not operating in their own little parochial focused areas, but making sure—I got the impression that they have pretty much worked through many of these issues.

Could you share with the committee about where you think they have done well and where you think the remaining challenges are?

Mr. HOROWITZ. I would agree with you that we've seen in our reports over time in various coordination centers, obviously the Terrorist Screening Center being one of several, considerable progress over 10 years in breaking down barriers and having people only run in their lanes.

I think one of the things that our work has tended to do is it ensures people understand we're still going to continue to look at the progress and make sure there isn't either backsliding, and that there is, in fact, more progress. Because this continual concern that I think we've seen—frequently it's a tendency of folks to want to keep their own information and keep their own work for themselves.

So, yes, we've seen improvement, but I think one of the things we think is important is we continue to watch over that. For example, we're doing a report on the OCDETF Fusion Center, that we should have that in the next several months. Another area where we're trying to evaluate: Is there, in fact, that kind of sharing going on that should be going on? We saw it in Fast and Furious, frankly, that there wasn't the sharing going on that should have been going on.

That's a constant issue, I think, from our standpoint, making sure that the name of the agency doesn't impact the fact that you can't sit in a room together and work together.

Mr. FATTAH. There are some—you know, I mean, I was in a meeting in Brussels with all of the law enforcement agencies from the European Union, and there is an amazing level of cooperation that they've established. There's no extradition needed between

countries. You can issue an arrest warrant on one side of Europe, and the guy can be picked up on the other side.

But as long as we have these individual agencies I think you are going to have some of the kind of normal competitiveness, but we don't want it to get in the way of success.

INTER-AGENCY INFORMATION SHARING

We have invested a lot of money in technology with the FBI on trying to use technology to help us be able to see the—where dots might need to be connected and there have been some challenges in that regard.

Mr. HOROWITZ. Right.

Mr. FATTAH. Can you tell us where we are with the IT upgrades and the new systems there?

Mr. HOROWITZ. Yeah. In our—in the reports I referenced that we previously did of JSOC and the cyber joint task force we found again progress but a number of issues still in terms making sure, for example, all of the components, all of the agencies were sending the information they needed to the joint task force. And we understand that is close to being resolved in terms of a recommendation that we made two years ago, that all of the components will be reporting their threat intrusions as we deemed was critical for JSOC to operate effectively.

So that is another place where we have seen in the last several years great improvements, a lot of work being done to get coordination in various areas, but we also found, for example, when we did the review a couple years ago on the field offices what was going on in FBI field offices and how prepared they were.

CYBER INTRUSION

As we indicate in our report we received many indications from many agents directly that they didn't feel they had the training needed to deal with certain types of cyber intrusion.

Mr. FATTAH. Right.

Mr. HOROWITZ. There are obviously crime-related cyber intrusion, there is espionage-related cyber intrusions, there is terrorism-related cyber intrusions, and others, and they can be—there are child online issues and there is different training needed for each, and that was a concern we raised about certain field offices from the FBI. We heard from agents directly that they had those concerns.

So that is an area, for example, where as we are thinking about where should we look next in terms of our audits and our reviews we are trying to think through carefully because it was such a wide space, and obviously resources are always being limited as they are, where is our most effective use for our next audit to look at this?

Mr. FATTAH. Well, there is no more important a priority for the department or for the country than national security, and so obviously to the degree that we can, use the resources of your office to help think through how we can better do this.

I mean, you know, we are trying to build confidence in the government, we want to make sure that we can build the reasons for

people to be confident, and that is to bring more competency to many of these challenges.

So I want to thank you for your service and I thank the chairman and I will yield at this time.

Mr. WOLF. Dr. Harris.

Mr. HARRIS. Thank you very much. I want to thank you being here in front of us because the oversight function is obviously a critical function of the IG.

Now, let me ask you, because national security is certainly important, but I am afraid you are about to be thrust into another area of the Department of Justice of importance which is this whole discussion about how we control access to guns of people who are ineligible to obtain them.

And the reason why I ask is because we are obviously about to embark on a discussion about whether we should extend the use of the NICS, basically when we talk about, you know, universal background, so that is basically what we are talking about.

PROSECUTING REJECTED APPLICANTS BY NICS

So I sought—because I had heard in the media, you know, these claims of oh, my gosh, you know, 75,000 people a year we stop from getting guns and things through the NICS, which of course is not universal background check now, so I looked for data, but when I looked for data on more information it wasn't an IG report, it was a report from CJIS, which I am sure you are familiar with, published in August 2012, the latest data from 2010, which indicates that there were 76,142 denials. So I assume that is the basis of a lot of the claims of how many people we stopped from having guns.

And look, I have filled out that front page, and when you check a box and say you are not a fugitive and you really are I am going to assume you are violating a federal law; is that correct? I mean it is clear.

Mr. HOROWITZ. Right.

Mr. HARRIS. Everybody understands. And when you check off a box that says I am not a felon and you are you are violating a federal law.

Mr. HOROWITZ. Right.

Mr. HARRIS. So I am not going to say all 76,142 people violated the federal law, but probably pretty darn close to that.

I have a couple of questions, and I don't know if your office ever looked into this, but you know, of those 76,142 only 4,700 were referred to field offices. So that is the first check, you are going to say, okay, how many are we going to refer for investigation ultimately to get prosecuted because you just broke the law by attempting to get a firearm? And by the way, of those 76,142, 13,000 were fugitives from justice. So a fugitive from justice already running from the law breaking another law by attempting to get a firearm.

So just put the figures, only 4,700 are referred to the field, of those 4,732, 1,144 are convicted felons, again, a felon who is now attempting to buy a gun, 62 out of—and I am going to ask you to try to confirm this if you can—out of 76,000, 62 were referred for prosecution, 13 convictions, 8 of those convictions in the State of Indiana.

Now, I have got to ask you as the Inspector General in charge of oversight of the department, if the department knows that close to 76,000 people have broken the law where is the breakdown that 13 get convicted and the rest the United States just turns the other way and pretends they didn't violate the law by attempting to purchase a firearm? Do you have any idea where the breakdown is?

I mean I can't comprehend the federal government knowing tens of thousands of people that broke the law and we convict 13. So if you can just shed some light on that.

Mr. HOROWITZ. At the outset let me just say I don't know the answer to the question, we haven't—to my knowledge—I have only—I have just been aboard 11 months—but I don't know of a report that we have done recently at least on that specific question.

It is something that interested me when I saw those numbers and those statistics, and I will just from my prior experience as an AUSA and having been on the sentencing commission and where I sit today I think part of the reason may well be what the penalties are.

Prosecutors—and this gets back to the prison issue frankly—prosecutors thinking about prison sentences as opposed to strategically about an issue of importance as they map out how we should pick our cases. And I know there is a lot of concern about those issues and I do think——

Mr. HARRIS. I hope so.

Mr. HOROWITZ [continuing]. I know I am speculating a little bit here obviously, but I—my guess is that may well be part of the reason is that as prosecutors are sitting there they evaluate do I take a drug case that could go to the state but has a big penalty associated with it, maybe I will take that one instead of doing the lesser penalty. I am just speculating on that.

Mr. HARRIS. And are these—who——

Mr. FATTAH. If the gentleman would yield for one second.

Mr. HARRIS. Sure, absolutely.

Mr. FATTAH. To share some information.

I think you are absolutely correct, and I would say that I believe that one of the executive orders that the President has issued is to direct the department to make sure that information—when someone does fraudulently fill out these forms that more of that information is shared with local authorities, number one, and that more prosecutions are put forward if there are federal crimes involved.

Mr. HARRIS. Well, if I can reclaim the time.

Mr. FATTAH. So I don't know the result because the order was just issued but——

Mr. HARRIS. Sure, and I can ask the witness. My understanding is these are federal crimes.

Mr. HOROWITZ. Right.

Mr. HARRIS. Exclusively federal crimes when you lie on the form.

And so I have to ask you, the prosecutors involved are federal prosecutors; is that right?

Mr. HOROWITZ. Correct. That is who would get the referral if they have been getting referrals.

Mr. HARRIS. Are they employees of the Department of Justice?

Mr. HOROWITZ. They are.

Mr. HARRIS. So this is entirely an internal matter. I mean someone at the Department of Justice makes the decision that prosecuting a violation of a background check is not a high priority prosecution. That is what you are saying. I mean 4,762 referrals—I'm sorry—4,732 field referrals, 62 referrals for prosecution. Someone is deciding this is not a high priority for prosecution.

Mr. HOROWITZ. Yeah. They are either deciding it is not a high priority for prosecution or the evidence may not be there for all I know at this point without looking at it, but I agree with you, it is something that is worth understanding what the decision is.

Mr. HARRIS. I filled out the form. If you don't check the box it doesn't even go any further.

Mr. HOROWITZ. Right.

Mr. HARRIS. They had to have checked the box. How much more evidence do you need than someone checking the box and signing it? I mean I am just puzzled. Having filled out these forms if you check the box and sign it how much more evidence do you need that you are breaking the law?

So I don't buy the evidence, but if you could look into it I would appreciate it.

I am just going to quick follow up on a related subject—and this has to do with how the department's money is spent, because there is the NCHIP program, the National Criminal History Improvement Program grants. I have a concern and I will ask you some follow up questions peculiar to my state, because interesting in Maryland the forefront of gun control allegedly has reports of only 64 people in the state disqualified for a mental health reason to own a firearm.

Now, I have got to tell you, I am a doctor, I know how many hospitals there are that have chronic—I mean chronic lifetime admission for mental health issues, there are more than 64 patients in those hospitals.

When the department looks at statistics like that what are they doing to improve the reporting?

You know, the whole idea behind the NICS is, you know, a background check only works if you have data in it. And I am really curious about what the department is doing to help my state report more than 64 people ineligible to own a firearm when just—and if the chairman would permit me—Virginia has 161,000 people in that database.

And thank you very much. I will say that Virginia actually between 2006 and 2011, so of course bracketing Virginia Tech, doubled the number from 78,000 to 161,000. Now, Maryland made a great effort, it went from 2 to 58 over that same time period.

But I have got to ask you, is there something we are missing in Maryland, some ability of the Department of Justice to help Maryland in some way get this?

And the flip side of it is, when these grants go out—because Maryland did get a grant—what is the follow up the department does to see that the money is spent wisely? Because I would argue that going from 45 before the grant to 58 after the grant, a 379,000 grant resulting in the reporting of 13 additional individuals with mental health. I am not sure that is money well spent.

So if you could just——

NCHIP PROGRAM

Mr. HOROWITZ. I will follow up. I don't know the specifics obviously on the Maryland situation as I sit here today. I will follow up and report back to you.

Let me just on your last point it is something I have been concerned about broadly as to grants, which is the department—we have done a number of reviews on the department's decision making as to grants and found generally they followed scoring, they have appropriately handed out the grants, but it doesn't appear broadly speaking that the question then is asked what's the return on investment? Which you would expect to be the next question right back. And so this is another example of that question being raised and being the important question.

Not only is it important that we know it is properly given out, which obviously is critical, but then once the money goes are we getting return investment? And even if it has well spent the money, but the question then is not fraudulently spent, we are talking now about just performance.

Mr. HARRIS. Right. No, thank you, and I appreciate it. That is why I want to bring it to your attention, because I would hope that the IG's office—again, as the Nation concentrating on this issue of keeping guns out of the hands of the two major populations, both people who criminally are disqualified and who for reasons of mental health are disqualified, this is obviously important.

And the nexus really is the NICS, and the bottom line that is really what it is going to depend on.

So thank you very much for that, and thank you, Mr. Chairman.

Mr. WOLF. Well, I am going to go to Mr. Schiff, but I appreciate Dr. Harris raising that, and next week we are going to have the NSF that will come up. We asked them to do a study right after Sandy Hook and they are going to talk about much of what you raised—mental health is very, very important in addition to guns. I mean the gun issue is going to be a controversial issue. I supported the Brady Bill, you know it is going to be guns, it is going to be controversial, whatever side you are on.

But the mental health issue, and I think Dr. Harris is exactly right, also covers the violent media, the video games. I mean to pretend as a grandparent or a parent that these violent video games don't make a difference is crazy, and not to deal with it. So I appreciate it.

I want to give you some good news though and I don't often say great things about Attorney General Holder, because we have some differences on some issues, but I wrote the Attorney General asking him to look at this issue, and to his credit he just—we asked him to increase the grants to reprogram money to do precisely what you are doing and also to include a bill that Bobby Scott, we passed here in the House, to do it by executive order, and so here is what the Attorney General said in his letter. It was coincidence you just commented.

He said, "Dear Mr. Wolf, I appreciate your letter about the President's plan to reduce gun violence. I agree with you that improving the data in the index, particularly records related to criminal his-

tory and mental health will improve the effectiveness of the background system and lead to reduction of gun violence.

"I am pleased we will be able to make funds available in fiscal year 2013 to accomplish that goal."

And then he said, "I appreciate your support for that effort and for a national center on campus safety."

Bobby Scott's bill has a center at the Justice Department for campus safety for colleges. So what did they learn at Virginia Tech? But also for school systems so they have a place to go.

But we will give you a copy of this and I will just insert—and I appreciate the Attorney General, you know, moving ahead, and we will just insert this in the record, and Mr. Horowitz, we will give you a copy of this.

[The material follows:]

The Attorney General
Washington, D.C.

March 12, 2013

The Honorable Frank Wolf
Chairman, Commerce-Justice-Science
Appropriations Subcommittee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Wolf:

I appreciate your letter about the President's plan to reduce gun violence. I agree with you that improving the data in the NICS Index, particularly records related to criminal history and mental health, will improve the effectiveness of the background system and lead to a reduction in gun violence. I am pleased that we will be able to make funds available in FY 2013 to accomplish that goal, and greatly appreciate your support for that effort and for a national center on campus safety.

You have been a leader on these issues, and I'm grateful for your strong and consistent support for the Department and its mission.

Sincerely,

Eric H. Holder, Jr.

Mr. HOROWITZ. Thank you.

Mr. WOLF. But I do appreciate the Attorney General doing it. But I think you are right on target.

And the next step of the three-legged stool is to deal with the issue of these violent video games.

And we also talk about tax breaks closing loopholes. These guys got so many loopholes. I mean they have got the lobbyist in town for the video game guys.

I mean if you retire from here and want to make a fortune just go downtown and you can represent these guys.

Have you ever seen Grand Theft Auto? Have you ever seen that?

Mr. HOROWITZ. I have not. I have heard about it, but I haven't seen it.

Mr. WOLF. Violent. You know, garbage in garbage out. Do you know the time they did the ET movie and they had M&Ms. M&M sales went off the charts. I mean to see this stuff. And then there is another one called Call of Duty. I have just seen a glance. It is violent.

So any way, I want to publicly thank the Attorney General, put this in a report, and thank you Dr. Harris, and we will give you a copy of this.

Mr. FATTAH. Mr. Chairman, if you would yield for just a second, because I want to also agree with Dr. Harris' concern here, and my staff has located a memorandum from 2001 from the Attorney General on this same issue where they said they found 120,000 cases where people had fraudulently filled out this form and yet the prosecutions, once it went down the referral line from ATF all the way down to the U.S. Attorneys' Offices, only 230 were referred for prosecution and 185 were actually prosecuted out of 120,000.

So this is an issue that sounds ripe for your shop to be taking a look at.

I yield back. Thank you, Mr. Chairman.

Mr. WOLF. So you will look into that? Can you look at that——

Mr. HOROWITZ. I will look into that and report.

Mr. WOLF. And when you see the Attorney General in the hallway tell him Mr. Wolf said we really do appreciate it and we made it public. But I do think what he has done here is rather than be waiting for the next years' appropriation to kind of do it now.

Mr. HOROWITZ. Right.

Mr. WOLF. Mr. Schiff.

SOLITARY CONFINEMENT IN BOP FACILITIES

Mr. SCHIFF. Thank you, Mr. Chairman.

I wanted to raise a couple issues within the prison system. We had a chance to discuss some of them previously, but one of them involves the extensive use of solitary confinement both in federal and state prison in the United States. We use it a lot more than I think just about any other country.

Mr. HOROWITZ. Uh-huh.

Mr. SCHIFF. I know there is a—I guess the federal prisons have now undertaken an external audit of their practices in this regard, but I wonder if you could share your thoughts whether you think that audit is sufficient, whether you think that an OIG investigation is necessary. I would love your thoughts on that.

Mr. HOROWITZ. Yeah. I think it is an important issue and I know we talked about this in our meeting.

The BOP went forward with retaining external consultants to look at this issue of solitary confinement.

I think from our standpoint our view right now would be to look at that report, see what comes out of it, and then decide what our next steps are.

Again, as we are trying to manage resources I think given they have gone that route hopefully that will be done fairly quickly, we can then evaluate it, and then I do think it is an important issue for us to think about and consider given all that has been out there recently about this issue and the concern that I think is very legitimate that has been raised.

Mr. SCHIFF. Well, what do you think is a reasonable period of time for the audit to be concluded?

Mr. HOROWITZ. Well, my hope would be that there would be a report back within six months or so, some time in the fall, that that would seem to be reasonable for an outside consultant report.

Mr. SCHIFF. Thank you.

Let me ask you another prison question, and that is I have always felt that not having drug treatment available on demand in custody for anyone who is interested or willing is a mistake financially and every other way, because when we release these people from custody who have substance abuse problems we shouldn't be surprised when they recidivate, we should be surprised when they don't.

And as I understand it, while substance abuse treatment is mandated for all Bureau of Prisons prisoners who volunteer and are eligible, eligibility remains at the discretion of the bureau.

BOP requires, among other things, that inmates who volunteer for drug treatment have a documented and verifiable substance abuse disorder and that has to be verified within 12 months prior to the arrest.

The DSM defines sustained remission as not having used drugs for one year.

Accordingly, prisoners who can't verify drug abuse within 12 months prior to arrest or matter of the nature and extent of their prior substance abuse problems are denied entry into the drug treatment program.

In addition, evidently inmates must have 24 months remaining on their sentence to be eligible to participate even though the program can be completed in 15 months or less.

Prisoners can be disqualified for treatment if they have insufficient time remaining on their sentence or if language barriers prohibit sufficient communication with BOP health professionals.

DRUG ABUSE TREATMENT FOR FEDERAL DETAINEES

From its inception in 1989 to 2007 drug treatment was made available to Spanish speaking prisoners. In 2008 when BOP's national drug abuse coordinator acknowledged for the first time that the bureau was unable to meet its mandate to provide treatment for all who qualified for drug treatment the RDAP eliminated its Spanish program.

Given the expanding and unsustainable increases in prison costs we have to explore improving our efforts to reduce recidivism, and drug treatment has proven effective not only reducing drug abuse and relapse among offenders but recent studies show that inmates who participate are 16 percent less likely to recidivate, and that figure goes up to 18 percent for women.

Have you looked into the availability of drug treatment for federal prisoners? Are there barriers to participation that you know of? How can we ensure greater access for inmates who need this?

Mr. HOROWITZ. I don't recall us having looked into that recently and what the statistics are recently.

We are in the context right now of several reviews, we are doing halfway houses touching on this issue of the actual implementation of the program on the ground in the halfway houses, for example, and what we are seeing or not seeing there, because that is one of the requirements in the contracts with halfway houses.

So that is an area where we are looking at it, but we haven't done a macro level look at the prisons and seen the data generally, and I can certainly go back and ask within my office what we know about that and report back to you.

Mr. SCHIFF. Are there any macro level reviews in your office of the efficacy of various approaches to dealing with the recidivism?

Mr. HOROWITZ. We haven't done that, and frankly, I am not sure how—that our staff of auditors and analysts are really trained to do a recidivism study.

Having been on the sentencing commission where we did do several studies on recidivism rates, or at least reviews of recidivism rates, I think frankly there is a lot of different social science backgrounds that are needed for that.

So I am not sure where necessarily the right place is to do evaluations of what type recidivism rates have gone up and down.

We have done reviews in our compassionate release report which will come out in the next month or two, we will report on what is in fact the recidivism rate for those released through compassionate release, and I think not surprisingly the recidivism rate will be much lower than what people believe it will be. But we are not evaluating there the rationale for why the rate is higher or lower, but simply the statistical analysis.

Mr. SCHIFF. And I realize that may be too broad a mandate for your office.

Is there a slice of this problem that you think is well within your lane that would contribute to our understanding of what works or the degree to which certain programs like the drug abuse program are not being adequately utilized?

Mr. HOROWITZ. Well, I think what we found in the reviews I have seen to date and that we are working on right now is where we go in and evaluate, for example, in the UNICOR situation or in the compassionate release situation where we go on the ground and ask the wardens and the inmates—or not necessarily the inmates—but the staff, occasionally the inmates, what they are seeing on the ground and actual implementation I think we are quite capable and do I think a very good job of reporting out what we are seeing.

And the good news is we generally get very honest, straightforward answers, not guarded answers from folks when we go in.

And so I have found that when we identify in a scoped way a particular issue get the data at a reasonable level and then can do some interviews behind it to understand why are the trends declining and UNICOR, why are the trends declining on compassionate release, those sorts of thing, we can get some very I think useful anecdotal information for folks in the department and members of Congress so they can evaluate, okay, where do we go from here?

DNA BACKLOG GRANTS

Mr. SCHIFF. Changing gears for a minute I wanted to ask you a little bit about the Debbie Smith DNA backlog reduction program.

We are very sensitive to the issue of backlogs in Los Angeles city and county where we had a huge rape kit backlog for many years. Finally it seems to be under control, but there have been a number of concerns raised by this subcommittee and others that funds that were designed for backlog reduction have been used, broadly disbursed in grants to agencies that have little to do with backlog reduction.

Is that an issue that you have looked at and what is your sense of whether we are doing a better job to make sure those funds go for backlog reduction?

Mr. HOROWITZ. It is an issue we have looked at in the past. We actually have an ongoing review and an audit right now involving the National Forensic Science Technology Center, and the approximately $48 million in grants that they received to try and evaluate what were those monies used for, the performance side, were they effective, were they used for the purposes Congress intended? And we hope and expect to have that report out this summer in the next few months.

GAO is separately doing a review that was asked for and we obviously coordinate regularly with GAO.

So we are doing our review, they are doing a separate review of a different slice of that issue, and what I have talked with our auditors about doing is once we finish ours in the summer, they are scheduled to finish theirs in the summer, that I have read the language in the legislation about the concern that Congress had and it is a quite serious concern from my standpoint, I would like to see what those two audits are and then scope out what are we finding from those two audits that we should be looking for.

Because we have done an audit of DNA lab work at the FBI in the last 11 months since I have been on board that found the bureau has done a very good job of managing that number to a reasonable number from what was very problematic previously.

And what we should be able to do, given our work, is take that learning, what we found that was working at the FBI, what we are seeing in the current audit we are doing, that GAO is doing, and then figure out in the fall how do we take that going forward?

Mr. SCHIFF. Thank you very much.

Thank you, Mr. Chairman.

Mr. WOLF. Thank you.

I got your memo on your tie today. We are bonding here. I bought this at a discount but I don't know what you paid for yours. I just looked over there.

I appreciate Mr. Schiff raising that.

PRISONS

You know, an idea that I have had and I would like to get your—I think we need a national commission on prisons. We are now the largest—other than our good friends in China, the evil government, the wonderful people of China—and the cost. There was a prison guard killed.

Mr. HOROWITZ. About a month ago.

Mr. WOLF. Less than a month ago. There was another prison guard——

Mr. HOROWITZ. A federal prison guard, right.

Mr. WOLF [continuing]. Who I believe committed suicide because—was it because he was so upset that he thought——

Mr. HOROWITZ. I don't know that.

Mr. WOLF [continuing]. Well, that is not for the record.

I mean but there is a problem, and I think there was another one killed maybe and when I see the UNICOR thing dropping and I see the recidivism rate and I see the alternatives to incarceration by a lot of the governors, some of the pretty conservative governors.

Mr. HOROWITZ. Right.

Mr. WOLF. Texas is doing a great job. I talked to Mike Pence, he wants to do it.

I think you are going to find with the sequestration issue you are going to find the prison system is really going to be hit.

Mr. HOROWITZ. Yeah.

NATIONAL COMMISSION ON FEDERAL PRISONS

Mr. WOLF. What are your thoughts about having a national commission of respected people, not soft left-wing liberals that are just going to let everybody out, but not——

Mr. FATTAH. Wait a minute, I resemble that remark.

Mr. WOLF. My father was a policeman in Philadelphia, so I mean——

Mr. HOROWITZ. Right.

Mr. WOLF [continuing]. But people like Chuck Colson who was in prison who cared deeply about prisoners. Colson has since died. But people like that who really care are looking at it from a budgetary point of view. But to have a national commission to really look at it. What are your thoughts about that?

Mr. HOROWITZ. Well, a couple things. One of the things I think has gone out on in the last five to ten years is that states have seen this issue and have made changes far ahead of what has happened at the federal level. The states are leading on this issue. And I think it is important for federal policy makers to see all the changes that have occurred at the state level because they saw the budget issues many years before the BOP is now facing them.

But this is, as I laid out, it is an unsustainable path for the Justice Department. To think that the department has gone from 14 percent of its budget share being BOP——

Mr. WOLF. What year was that again?

Mr. HOROWITZ. Fifteen years ago.

Mr. WOLF. Fifteen years.

Mr. HOROWITZ [continuing]. To 24 percent roughly today, during that same period of time the department got a 40 percent budget increase.

So while the department's budget increased by 40 percent the BOP's share went from 14 to 24. The FBI share is 29 percent.

So those numbers over the last 15 years have started to move very close together, and unless there is a change in enforcement policy, prison policy, or something, the number of prosecutions brought per year is increasing roughly three percent a year. That has been a relatively straight line three percent or so a year. And if it doesn't change in some way or isn't addressed in some way that 24 percent, the BOP itself recognizes that number is going to increase, and this is a bipartisan issue.

The only material weakness—performance weakness that the department identified has been this issue of the BOP's capacity and budget, and that was identified in 2006 by the prior administration.

And so this is not a you just look at the budget numbers. It is pretty clear what the problem is.

Mr. WOLF. Well, maybe Mr. Fattah and I can talk about it. Maybe the answer is you could have some of the prison directors in the states that have done a good job, not knowing if they are Republican or Democrat, and get them to come together. But—

Mr. FATTAH. Some of the most conservative state governors in the Nation have done a great job on this issue, and you know, it is not just a budget issue, I mean this is a major issue in terms of families and——

Mr. WOLF. Yeah, it is.

Mr. FATTAH [continuing]. You know, with drugs and meth and some of these other challenges that have gone on. It is a big issue. We just can't keep imprisoning everybody, even if you are not as liberal as me.

Thank you, Mr. Chairman.

Mr. WOLF. Well, maybe we should talk and see. Maybe we can put some language in.

Mr. Bonner.

Mr. BONNER. Mr. Chairman, I did not get the memo about the pattern, but let the record note I do have the color.

I want to associate myself with the chairman's comments about our distinguished witness today. We really do appreciate the example of public service that you provide.

We have talked a little bit about prisons and guns and policy, even mentioned a couple violent video games, so I am going to throw something new at you, and it is in light of the report that was released this week on the civil rights division of the Justice Department.

VOTING RIGHTS ACT

I want to start though by saying I wish everyone on the committee, I wish everyone in the room could have been with me in my home state a couple weeks ago.

At Foster Auditorium, which 50 years ago this June was the setting for an attempt by the governor of Alabama at the time, George Wallace, to block two African-American students from attending the State of Alabama's oldest public university.

We had my sister, who is the president of the university, first female president in the southeastern conference, welcome Sharon Holder—Sharon Malone Holder, the baby sister of Vivian Malone, one of the two African-American students who were attempted to be denied, who is also the wife of the Attorney General, sixth generation Alabamian.

We had her give a reflection on what it was like with her older sister in the national spotlight.

We had Peggy Wallace Kennedy, the daughter of the former governor, George Wallace, give a reflection on what it was like for her with what her father was doing.

We also had the daughter of former President Johnson and one of the daughters of the former Attorney General, Robert Kennedy. So it was a very powerful moment.

Congressman Lewis, our colleague that I think everyone universally across the aisle respects, leads a pilgrimage back to retrace the steps of the civil rights movement.

So I bring this up knowing that my home state has played a prominent role in this.

Your department, Mr. Inspector General, just recently released a 258-page report, and I have had a chance to go through it. There was no abbreviated executive summary that I saw.

So in light of the fact that the Supreme Court—and we actually—some of us had a chance to go quiz the Supreme Court justices in the financial services hearing, but we wanted to come talk with you instead—but in light of the fact that the Supreme Court has recently heard Shelby County, Alabama, which is not in my district versus the Justice Department, and not knowing how they are going to rule but knowing that it is possible that this whole issue of Section V of the Voting Rights Act might come back before Congress for further action some time later this year, I would like to focus my questions and give you a chance at the end if you want to comment a little bit more in detail about what your IG report found on the Civil Rights Division. But I would like to just get a few questions on the record.

Is it a fair assessment to state that Section II of the Voting Rights Act was intended to prevent voter discrimination based on race or ethnicity?

CIVIL RIGHTS DIVISION REPORT/VOTING RIGHTS ACT

Mr. HOROWITZ. As I understand it Section II is designed largely to ensure that voters are not discriminated against and are able to exercise their right to vote.

That is essentially as I understand Section II, and I will start with I am not an expert obviously on civil rights.

Mr. BONNER. I understand, and I am not asking you to become an expert today.

Then would it be from your perspective correct to say that Section V of the Voting Rights Act is intended to conduct an in-depth review of voting changes before they can be approved by the Jus-

tice Department in certain states—actually a very few number of states—that had a historical and noticeable racial discrimination such as my home state of Alabama did?

Mr. HOROWITZ. Yeah. As I understand it the Section V statute lays out a formula for which jurisdictions need to have preclearance or a review by the section—by the Justice Department before implementing certain changes.

Mr. BONNER. So to your knowledge would it be correct to say that since 2003——

Mr. HOROWITZ. Uh-huh.

Mr. BONNER [continuing]. We could actually go back to the 2000 presidential race, but we will say since 2003, 10 of the 13 cases pursued by DOJ under Section II of the Voting Rights Act have been against states that are not subject to the more stringent Section V requirements of the Voting Rights Act.

Mr. HOROWITZ. I would have to go back. Actually I don't think I recall criss-crossing between our Section II chapter and our Section V chapter to see whether there was that overlap.

Mr. BONNER. If you could it would be useful.

Mr. HOROWITZ. I will report back.

Mr. BONNER. And my point in full transparency is this. If—and the Supreme Court may uphold this——

Mr. HOROWITZ. Right.

Mr. BONNER [continuing]. We don't know what they will do—but if they strike down some parts or all of this then it will be back up to legislative branch.

Mr. HOROWITZ. Uh-huh.

Mr. BONNER. This won't be something that can be done by executive order, it will be up to the legislative branch to respond to the Supreme Court's decision.

So I am just trying to look at the fact that we sinned 50 years ago, there is no doubt about it. We sinned probably longer than 50 years ago, but those sins brought about monumental change, change for the better.

Just a couple weeks ago we had the opportunity—some of us did—to go into Statuary Hall and to pay homage to a young lady also a native of my state who refused to get up off of a bus in Montgomery, and her statement changed not only America, but changed the world. Rosa Parks.

And so I know when I, a member of Congress from Alabama, a Republican, a conservative speaks on this issue you have to be very careful because of images of some of the people who are no longer with us.

But I just wanted to try to get some attention focused on the fact that the hanging chads in the 2000 presidential election or the voting irregularities in Ohio or in Chicago, or I know Philadelphia would never have any problems or California or other states.

All I am saying is if we have to have this discussion much like Dr. Harris is anticipating we are going have a debate about guns this year, and we will, I think we need to have the facts about whether we should still be using voting election returns from when President Johnson was in office or President Nixon to deal with these states or do we need to have a more honest discussion about other issues more recently in other states.

That is really where——

Mr. FATTAH. If the gentleman would yield.

I appreciate everything the gentleman said, and I—believe it or not I agree with him, that you know, the law has to have some currency. But I do want to make a couple just informational points.

Under Section V it is not just a group of states, there are also counties.

Mr. BONNER. Yes.

Mr. FATTAH. In California and other states where there have been histories up until that moment of efforts that were designed to deny people to right to vote.

Now we just went through an election where in my home state they wanted to have a set of new rules applied that some argued were for voter ID purposes, others argued would have had a disparate affect of certain populations in the state, and it would have been just as important, you know, to review it as, you know, a change in Alabama as far as I am concerned.

So there will probably—you know, depending on what the court does it will be in our lap to figure this out. Even if the court were to reaffirm it, it is still the Congress' responsibility, you know, to update our—the laws that we passed.

And so we passed this law that will be in the normal course of business or in some point are we decide to take it out of the normal order of business a need to adjust it.

But for our nation as we celebrate democracies around the world with people with ink on their fingers in the air and we even sacrifice or young peoples' lives so that people can have the right to vote, we should never retreat as a country on this issue.

And you know, much of the civil rights acts would not have been passed if it weren't for Republicans and the Congress who voted for it or people in my party who are the ones standing in the way of progress in some respects.

So, you know, this is a bipartisan responsibility we have to uphold the ideals of our Nation. So I appreciate the gentleman's comments.

Mr. WOLF. Well, I didn't plan on talking about this, but I will, I think Mr. Bonner raises a very good point, and he is one of the more thoughtful members of the House, and when you were speaking it just flooded back in.

I was the only member of the Virginia delegation when the Voting Rights Act came up in—no, it was during the Reagan years, it was 1982. I was the only member of the House from Virginia that voted for the Voting Rights Act Section V. The only one.

The *Richmond Times Dispatch* had an editorial against me ripping me apart.

And since that time when I voted for the reauthorization a paper in my district did three editorials against me.

But I think Mr. Bonner is right, you reach a certain point where we have elected an African-American president, and I see some of the difficulties that certain localities in Virginia that I know are not discriminated against anyone, so I think—and I think we really need a discussion about this publicly, because I think the gentleman is right.

Also and just to be very controversial, is this could be controversial, I remember when Eric Holder got elected he made a speech, he said we were a nation of cowards upon the race issue, which I did not quite understand to the sense that I think America is doing, and I went to school, and the reason I voted to the Voting Rights Act Section V and the reason I voted for it again and some of my delegation got angry at me and how you like to be with the team and you were the only one, I was brand new, is I went to school at Ole Miss for a year and I saw things down there that were really bad, and I have driven through the Delta, so I wanted to make sure that—and that is why on the Black Panther case in Philadelphia I went there.

So—but I think, you know, one, things have been done in the nation that are wrong, but I think your point really is a very powerful point to make and I think it is important to have these discussions not just in cloak rooms in a vacuum but I think—and I appreciate you really kind of bring that up. It is very thoughtful.

Mr. BONNER. Well, I appreciate both the chairman and the ranking member, and I have got a couple other questions I might submit to the record.

I don't want to consume any more time on that other than the fact that I think the ranking member and the chairman are both right, we need to have this conversation in the open. And whether it is in response to a Supreme Court decision—I voted against the extension. I was one of only 33.

So conversely I got—I have only had one vote on it in my time in Congress—and so I have gotten calls, you know, do I have a sheet in my closet, and you know, was my father a member of the Klan? I mean there are—there is a tremendous amount of scrutiny.

The reason I did it though, and it was very painful, I went back to my two predecessors who were 38 years had a chance—Jack Edwards, had a chance to vote for the first—the Voting Rights Act in 1965 and was in Congress for 20 years, and Sonny Callahan who Mr. Fattah and Mr. Wolf served with was in for 18 years, and I went to both of them—it is the only time I have ever been to my predecessors and begged for their guidance on this, because it was a difficult issue.

The reason I voted against it, I was as I say, clearly the minority, wasn't because I didn't think that we needed to keep the torch of freedom open for those people like Mr. Fattah said who literally risked their lives standing in lines a mile long and put a purple ink stain on their finger in Iraq and in other countries, but because I felt that it was time to talk about this from a national perspective. Not just focusing mostly on the states of the old confederacy and some other additions and a few counties around the country.

Interestingly the five counties in Florida that were added to it were not the counties where they had the problems in the 2000 election.

But any way, I appreciate so much the ranking member and the chairman's indulgence.

FEDERAL PRISON POLICY ON RELIGIOUS MATERIALS

I would just ask totally unrelated going back to the question about prisons, and this is probably not under your jurisdiction and

out in left field, but I recently tried to send a young man who was convicted of involuntary manslaughter, he is in a state prison, but I recently tried to send him a couple spiritual books to encourage him——

Mr. HOROWITZ. Uh-huh.

Mr. BONNER [continuing]. And they were—he was denied an opportunity to receive them.

I know Congress is unpopular, but I just found it troubling that these were books based on an author from my district who gives a lot of motivational speeches.

This young man will be out of jail—out of the state pen in seven years and I just don't know whether the federal prison system has a similar ban.

I know that we shouldn't send some things, but I was very troubled by that.

Mr. HOROWITZ. I don't believe there is such a ban, to the extent there is the ban on the state. In fact the prisons I visited have very robust clergy programs, for example, for inmates.

I am certainly, you know, happy to have folks come back and let me provide you with——

Mr. BONNER. Well, this is in another state.

Mr. HOROWITZ [continuing]. What the federal regulations are.

Mr. BONNER. I might not burden you with that.

But thank you, Mr. Chairman.

Mr. WOLF. Are they the books that were passed out at the—I read both of the books and they are both great books. The guy's name was?

Mr. BONNER. Andy Andrews is an author in my district and I thought this young man, he is trying to turn his life around, he is just a few years from getting out and I thought they might be——

Mr. WOLF. And I recall the guy did turn his life around. He was living under a boardwalk or something like that.

Mr. BONNER. Living under a pier, right.

Mr. WOLF. A pier, yeah. Okay.

Mr. BONNER. Thank you.

Mr. WOLF. Mr. Fattah, do you want to——

Mr. FATTAH. No, I am fine, Mr. Chairman.

Mr. WOLF. Okay. The justice reinvestment, I think we kind of covered it, but that the FBI cyber—a whistleblower I think is very important, because I think federal employees ought to be willing to come forward. Much of the important work you have discussed today uncovering waste, fraud and abuse was made possible by whistleblowers.

WHISTLEBLOWER OMBUDSPERSON

The Whistleblower Protection Enhancement Act enacted last year requires Inspector Generals to establish a whistleblower ombudsman position.

Can you update the committee on what you are doing to implement this legislation, and have you assigned someone to this job?

Mr. HOROWITZ. I have. In fact when I first got into office, again having come from the private sector where ombudspersons was where the private sector was moving as well, I actually appointed

someone to that position before Congress passed the legislation, because I thought it was important to do.

And so I appointed a prosecutor who is working in our office from the northern district of New York to serve in that role and to be the person who is making sure we are being responsive to whistleblowers and is working on and we have been working on education and training programs.

Mr. WOLF. Does everyone know who he is and where he is?

Mr. HOROWITZ. Well, we are getting the word out. I have worked with the office of special counsel, for example, to come up with a program. We have been contacted, for example, by ATF to do a training program following the Fast and Furious report. So I think word has gotten out.

The Attorney General and the Deputy Attorney General know that I have made that appointment before—again, last summer before the legislation was adopted. So we are going to get the word out.

And one of the things I want to do is make sure that we can come back to Congress and report to you on the steps we have taken to make sure that position is an effective position.

Frequently the response is, well, we filled the slot and we don't have to worry about it. It is going to be something that person—the person works in the front office, works directly with me, and so we are going to——

Mr. WOLF. Did you say he was from where?

Mr. HOROWITZ. From the northern district of New York, an AUSA, he is here and he is on our staff.

Mr. WOLF. Okay.

ASSET FORFEITURE SURPLUS

On the asset forfeiture the department used $151 million from the assets forfeiture fund to purchase the Thomson Prison last year, a purpose for which no funds had ever been appropriated. The reprogramming was rejected by the committee. And the committee—I mean you can be for or against something, but if—I think the Congress under the constitution Madison had some thoughts, and so it is just the way it is whether we like it or not—but the reprogramming was rejected by the committee, the department went forward with the purchase anyway.

I understand this transaction was made possible by the department of a declaration of a super surplus in the asset forfeiture fund.

Can you include your review, look into the law, the policy, and standards practices for declaring a super surplus? And what is a super surplus? I mean what is it?

Mr. HOROWITZ. I have tried to understand that myself in the last few weeks. I gather what occurs is——

Mr. WOLF. Is that a legal term?

Mr. HOROWITZ. That is—I think that is what it has been called. There is a statutory provision Subsection 524(c)(8)(e) of Title 28 which is the provision I gather that this flows out of, but it is in essence if there are excess funds once all of the appropriate uses have been undertaken beyond the payouts from the asset forfeiture

funds there is something left. If there is something left over that is what becomes called the super surplus.

I did ask our auditors who do the annual financial statement audits for the department whether they know of other instances that this has occurred and they indicated that we don't get notice of every single instance when it occurs, so this is not complete information, but they indicated they weren't aware of as large a number as the Thomson number.

Mr. WOLF. Because part of the Bureau or Prison's problem if you could have that money for that now. Would you look at it? I mean it was unusual.

Mr. HOROWITZ. Uh-huh.

Mr. WOLF. And could you take a look at it and report back to us?

Mr. HOROWITZ. Let me go back and get the data together——

Mr. FATTAH. I join with the chairman, I am a big supporter of the Attorney General and of the department; however, I share with the chairman's concerns about the nature of how this got around the reprogramming.

Mr. HOROWITZ. And I will put a response back and data information back together for the committee.

NASA-LANGLEY

Mr. WOLF. On February 8th Chairman Smith of the science committee joined me with a letter asking you to review the department's handling of a case involving alleged illegal transfer of ITAR controlled technology by individuals at NASA Ames Research Center.

I have heard that the case was declined after a lengthy investigation and that evidence was mishandled or corrupted. You have not responded to our letter.

So the transfer of export controlled technology is a very serious matter and I showed—again, this is not a republican or democrat issue—that some of the technology at one center I just saw that China on UAVs and—but here the transfer is serious.

Are you going begin an investigation and handle this case?

Mr. HOROWITZ. And this is a significant issue, and one of the things that we are doing and what we have done in the last couple of weeks in response to the letter is do some background review on the facts so that we can make an evaluation on the jurisdictional issue. Because under our authorizing statute Section 80 of the Inspector General Act we are one of the few inspectors general that do not have authority over all allegations of misconduct within the department.

If it is an attorney-related decision—and I am generalizing here—under the provision of the act that is under the jurisdiction of the Office of Professional Responsibility we are excluded from having jurisdiction by statute on that.

So what I am trying to do is evaluate carefully what we can do. Is there a basis for us to exercise jurisdiction and evaluate that decision, and obviously report back to the committee on that.

But that is an issue we struggle with on several occasions frankly is when we get a referral letter is—and there is an allegation

involving attorney misconduct—whether we have the basis to proceed.

INVESTIGATION OF DEA AGENTS IN COLOMBIA

Mr. WOLF. Last year your office investigated the activity of those three drug enforcement administration special agents stationed in Cartagena, Colombia.

Mr. HOROWITZ. Uh-huh.

Mr. WOLF. I have spoken with a DEA administrator about the matter, and we are going closely follow it, but can you summarize for the committee who your investigation found?

I understand there were two DEA agents, they facilitated U.S. Secret Service agents encountered with a prostitute and all three agents investigated admitted that they themselves had paid for sex and used their DEA BlackBerries to arrange such activities. They were also found to have deleted relevant information from their Blackberries.

Are these people still on the job?

Mr. HOROWITZ. My understanding is the administrative process that DEA handles and through the MSPB has not been completed yet.

Mr. WOLF. But isn't that kind of—I mean we have laws against sexual trafficking, in fact, we're going to ask you—I mean, there are—Neil MacBride, the U.S. Attorney who in Eastern District has done an incredible job. He's been a bright, shining star. If the administration is looking to move somebody up, this is the guy.

We have a number of centers where women are sexual trafficked in Northern Virginia. Neil MacBride has brought a number of these cases, probably more than most others, I think, where the committees carry language asking each U.S. Attorney to have a task force.

We're prosecuting this with regard to MS–13 gangs and other things and yet, here to have three DEA agents have acknowledged, I think, and they're still on the job, I'd have a hard time explaining that. So, did they have high level security clearances?

Mr. HOROWITZ. They did and that is something—one of the things we did when we learned of this allegation back in April—I think it was roughly April of last year, was make sure we kept the DEA informed of what we're finding so they could take whatever action they felt they could take because we—as you know we investigate, we make the referrals, we pass along the evidence and then, obviously, it's got to be implemented by the component that we're reporting on. We made sure they had the information as we were going along, what we were learning. They helped facilitate, we have a very good relationship with the DEA and its Office of Professional Responsibility. They helped facilitate some of the interviews that we needed to do down in Colombia. They got our final report back in September of last year, but from our standpoint once we hand off a report we follow it, but we're not involved in the litigating process.

Mr. WOLF. Well, are they still being paid?

Mr. HOROWITZ. I don't know the answer to that. I can find that out and report back to you.

Mr. WOLF. Are any still on the job, any?

Mr. HOROWITZ. My understanding is all three are still officially employees of the DEA. What their exact status is, I'd have to report back.

Mr. WOLF. That means they're getting paid. I mean, they're not coming in as interns, I can guarantee.

Mr. HOROWITZ. I'm assuming.

Mr. WOLF. The State Department policy prohibits U.S. personnel assigned to foreign missions from engaging in prostitution and I think that's appropriate, even where it may be legal. I understand this case has prompted you to evaluate the department's security training policies in light of the State Departments policy. Are you making any recommendations with regard to that?

Mr. HOROWITZ. We've just gotten that underway and that's—it's twofold, there are really two purposes there. One is to make sure there is an appreciation and there is the kind of training going within the law enforcement agencies that station people overseas so that, obviously, one of the main things we want to do is prevent not just prosecute.

So, we want to make sure that there is an awareness ongoing and then growing out of that, make recommendations on what needs to happen and what needs to change.

Mr. WOLF. Well, how long has it been? When did that take—when did this supposedly take place down in Colombia?

Mr. HOROWITZ. In Colombia? This was back in April of last year that the events occurred.

Mr. FATTAH. Mr. Chairman, this was occasion—this was part and parcel to the President's visit originally.

Mr. HOROWITZ. Correct.

Mr. FATTAH. And the issues that arose out of the Secret Service and then one of the Secret Service agents that was part of that activity came in and——

Mr. WOLF. Came in and interacted with these two DEA agents and they helped him—they were involved in these activities. So, this was a spin-off from that original investigation of the improper activity of Secret Service hearings.

Mr. HOROWITZ. We were alerted to this by the Secret Service when the agent who was involved—the Secret Service agent who was involved with the DEA agents reported that and they then disclosed that to us. We began an investigation of the event that we learned about from the Secret Service, but that's when we uncovered that this was more than just that one incident. That, in fact, when we collected the data and forensically recovered it, because two of the three individuals had not been candid with us and had deleted information that we could, nevertheless, forensically recover, we learned that this——

Mr. WOLF. You know for a fact they did delete it, then?

Mr. HOROWITZ. Part of our referral is the fact that there were deletions.

Mr. WOLF. And they're still on the job a year later. That's just not a good thing.

Mr. HOROWITZ. Well, we've had—I'll say this, we've done a series of reports about the discipline process throughout the department. We've done the law enforcement components. We're finishing one up now on the executive office of U.S. Attorneys and the discipline

process there. And in some instances we've had concerns about the speed with which processes move forward and, in fact, in some instances, whether they've moved forward. So, this is an issue we've followed, we've issued reports on about the concerns we have. This, obviously, I can't speak to this specific event because we're not involved in the litigation and we don't know what the defenses have been and what the issues have been.

But, it is something that we watch carefully when we make a referral, to understand what the outcome is or the process.

Mr. WOLF. Okay. I have one last—I want to cover about the voting rights section, the investigation. But do you have anything and then? Mr. Schiff, do you have any? Go ahead.

COLLECTION IN CRIMINAL AND CIVIL ACTIONS

Mr. SCHIFF. Mr. Chairman, I just had one last question before we get to that. You mention in your report—your testimony, that the U.S. Attorneys in FY 2011 report an ending principal balance of nearly $75 billion relating to criminal and civil actions that remain uncollected. Do you have a sense of how much of that is really collectible? Does it merit further investigation to determine what practices could change to help us recoup some more of that?

Mr. HOROWITZ. And it is. It's something I saw and if you look further you'll see one or two particular U.S. Attorneys Offices who are collecting the money, but that leaves 90 plus others to wonder why aren't you doing that and that's money sitting there. Some may not be collectible, it may be a big chunk. But, frankly, even if it's five percent, that's real money.

And so we are launching a review of that. That's something I've asked our auditors to scope out and look at and try and understand.

Again, is the department—this is something that I've been concerned about. It grew out of what I saw in Fast and Furious. This is a similar situation, which is the Department is a big department. It's got 117,000 employees, it's got all of these components, but in Fast and Furious, for example, I had trouble understanding and we said this in our report, why ATF had no policies or some policies while the FBI has a thick book of policies? Why aren't best practices being implemented across law enforcement components? This is that same issue in a different context.

If one or two U.S. Attorneys offices are figuring out how to collect money, why aren't the other 90 being told about it? Now, I don't know if they are just lucky or there's something more there. But that's something that I think we need to look at in this context and in many others, frankly, where the Department is and whether they're using best practices.

Mr. FATTAH. Thanks, Chairman.

Mr. WOLF. Thank you. I'm going to combine all these on the investigation that you just announced, but let me just read one or two and if you just give us some general comments.

CIVIL RIGHTS DIVISION VOTING SECTION

As you know, Mr. Smith and I requested the investigation. On Tuesday, you released a report on the matter as part of a detailed review of the Voting Rights section of the Justice Department Civil

Rights Division. Your finding showed a pattern of mismanagement, ideological polarization and professional and ethical misconduct. Can you summarize your findings? And then Attorney General Perez in his comments said—Assistant Attorney General, that, basically everything's been fixed. Do you think everything has been fixed?

That's part two, and you can sum it all up and this will be the last question. Your report observes that many employees involved in a most troubling incident such as inappropriate public commentary, harassment of colleagues, and disclosure of internal documents have left the Department and are no longer subject to administrative discipline. Roughly, how many have left, just out of curiosity?

Mr. HOROWITZ. I don't have an exact number. Many have left because we looked at ten years of events.

Mr. WOLF. So, a lot have. However, you note that some remain and you were referring these matters to the Department to determine whether discipline or other administrative action is appropriate.

What specific steps is the Department prepared to take beyond bolstering its annual training regarding prohibitive personnel practices? And then I had suggested that the Attorney General bring in former Deputy Attorney General Comey who stood up to the Bush administration, if you recall, on the whole issue—remember Ashcroft was in the hospital. Somebody like that, I think he was a U.S.—was he a U.S. Attorney?

Mr. HOROWITZ. He was the U.S. Attorney in the Southern District of New York and was the former Deputy Attorney General.

Mr. WOLF. To bring somebody like him out to kind of look at this thing so you're not putting all the burden on your office or on people that are currently in the building, so—does that make sense? Who's there? You don't have to mention it. Are there still people there? What do you think should be done? And would you briefly talk a little bit about what you found and, lastly, do you think it makes sense to bring in somebody like Comey or the National Academy of Public Administration or somebody—who do you think should be looking at it?

Mr. HOROWITZ. Well, we, obviously, laid out in 258 pages what we found and it was at many levels very concerning. In particular for those of us who started as prosecutors in U.S. Attorneys Offices where there was a level of professionalism and an expectation that you respected your colleagues, you worked closely with them, you didn't wear your ideology on your sleeve when you were in the office or prosecuting cases, no matter what the case was and I ended up in the Public Corruption Unit where we recognized it was particularly important to not be seen as leaning one way or the other.

But, to see the level of discord, the polarization, the harassment, the kinds of emails, frankly, that would be hard to imagine, among colleagues and about colleagues, no matter what you thought of their personal or ideological views was very troubling.

And so what we expressed here are concerns about the need to address professionalism, the cultural issues that are clearly present and the need to undertake some efforts to make sure that decisions in the section aren't always or regularly seen through ideological

glasses. That people can make decisions, people can work on cases no matter what those cases are or which side they're perceived to favor or disfavor and still be respected by their colleagues and that there can be a cohesiveness, I think is very important.

And I think among all the things found in this report for those of us, again, who have great respect for the integrity of the Department and what it means and what it needs to mean, both in reality and in perception, that's something that needs to be addressed.

Mr. WOLF. Because, as you mentioned, we haven't found this in the Antitrust Division or the Criminal Division or in the——

Mr. HOROWITZ. We haven't seen it in our office, this kind of discord, polarization and the environmental section—

Mr. WOLF. And we're back under both administrations?

Mr. HOROWITZ. This goes back——

Mr. WOLF. For how long?

Mr. HOROWITZ. Ten years. We looked at a period from 2001 to roughly 2010. That didn't mean the information or allegations that we got ended in 2010, we just at some point decided we needed to write this report and get it finished.

Mr. WOLF. You kept turning rocks over and every time you hit a rock, so you had to just come into the——

Mr. HOROWITZ. It just came to a point where we could have continually reviewed this and we—that's, obviously, at some point we've got to get the report out and it's our responsibility to report on the facts, lay out our analysis, what we think the concerns are and then leadership, obviously, needs to then make the hard decisions and implement changes.

Mr. WOLF. So, are you making the recommendations as to the people that are still there?

Mr. HOROWITZ. We have referred all of the incidents in here as to what occurred. We're going to make sure that we interact with the Office of the Deputy Attorney General as they review this to make sure they know, obviously, we've pseudonymed a number of the folks. We do that as a general rule depending upon the GS Level of the employee. We will make sure they get the information and like with Fast and Furious, we will ask for follow up and understand what steps have been taken in response to this report.

Mr. WOLF. What do you think about the idea of having NAPA and/or Comey or somebody like him come in and——

Mr. HOROWITZ. Having worked with Jim Comey, I have the utmost respect.

Mr. WOLF Where is he now?

Mr. HOROWITZ. You know, he's up back in the New York, Connecticut area. I'm not sure exactly where he is right now, but I've heard him speak about what it means to be in AUSA, what it means to be a Justice Department employee when he was the Deputy Attorney General. I think I'd encourage anybody to read his departure speech in the Great Hall. It really explains what it means to be a Department employee.

Mr. WOLF. Now, did he become the Acting Attorney General at the end?

Mr. HOROWITZ. Well, Attorney General Ashcroft handed over to him when he was in the hospital to be the Acting Attorney Gen-

eral. I'm not sure if there was another period of time when he became the Acting Attorney General or not.

Mr. WOLF. So, he would be a good—he or somebody like him would be a good person to——

Mr. HOROWITZ. Like I said, I have the utmost respect for him. I think, obviously, managers need to look at this report and decide what's the most effective way to get the message through to people in the section, that we want diverse viewpoints, we want people that respect diverse viewpoints and we want colleagues to work with one another.

Mr. WOLF. I go to Mr. Schiff and then to Mr. Serrano, that way. I'll give it to Congressman Schiff first. Whoever wants to speak.

Mr. FATTAH. I yield to Congressman Schiff first.

Mr. SCHIFF. Thank you, Mr. Chairman. I just want to follow up briefly, as I read your report and I appreciate the work you put into it and I know it had to come from the Department that there was a lot change that needed to go on in this division. I've been very impressed with AAG Perez and the degree to which he has changed the cultural and the hiring practices there. And I wanted to just highlight a few things from your report because I found that the trend line was very positive.

Under Shwassman there had been very politicized hiring practices and I think illegal hiring practices if I recall correctly. That's ended now; isn't that right?

Mr. HOROWITZ. We did not find in this report illegal hiring practices in the 2009/2010 period that we looked at, that's correct.

Mr. SCHIFF. Because the problem there had been that there were hiring decisions that were being made on the basis of very—on the political views or the ideological history of the candidates for jobs and that's not going on anymore, right?

Mr. HOROWITZ. Right. And we issued a report on that in 2009 with OPR.

Mr. SCHIFF. In fact, a lot of the new hires have significant voting rights litigation experience, right?

Mr. HOROWITZ. Yeah, that was the criteria put forward in the 2009/2010 hiring context for experienced attorneys, is what we reviewed.

Mr. SCHIFF. And you found that they had a high degree of academic and professional achievement?

Mr. HOROWITZ. That's correct.

Mr. SCHIFF. And under the leadership of Mr. Perez you didn't find any administration, politicization of voting enforcement?

Mr. HOROWITZ. That was true across the board. All throughout we decided, other than a handful of incidents we laid out across the ten years we looked at, we found there was insufficient evidence to conclude as to all the allegations we received that there would, had been improper, discriminatory-based decision making.

Mr. SCHIFF. And there wasn't a politicization of the foret process either; is that correct?

Mr. HOROWITZ. That's correct.

Mr. SCHIFF. Now, there have been a number of steps taken to try to crack down and insure that harassment and other inappropriate behavior doesn't take—isn't taken now. Hasn't that been undertaken by Assistant Attorney General Perez?

Mr. HOROWITZ. We found, as we lay out here, instances where policies were issued and statements were made and memos distributed about that and those concerns.

Mr. SCHIFF. But I take it there's still personnel that have been in the Department a long time and it's going to take time to get through some of the bigger divisions that accompany the last ten years?

Mr. HOROWITZ. My sense of this is, having seen other organizations that have had issues, cultural changes take time. You don't change an institution's culture overnight and that's something that, frankly, we were dismayed at, that looking at—having issued our earlier reports, and we issued three of them back in the 2007, '08, '09 time period, that we were still seeing some of the events we saw and still getting, regularly, complaints that we could not go forward and investigate all of.

But, there really needs to be a recognition. This is much more serious. When you look at the kind of emails people were flinging at one another you can understand why there, how there could be that lingering concern and I think people just need to take that into account and grab this issue and go with it.

Mr. SCHIFF. And I'm confident the Assistant AG will. You know, I appreciate the amount and degree—the degree in which he's turned around the Civil Rights Division and got it back to its focus and ended the politicization of the hiring practices that had occurred previously. Thank you and I yield back, Mr. Chairman.

Mr. WOLF. Yeah, I'm going to have to comment on it. I don't agree with that. And I didn't mention people's names here, we try not—but there's a political report and political is not always right, so let's stipulate that.

But the OIG report says it faults Perez for giving misleading public testimony in 2010 when he said, political appointees were not involved in decisions about the case. And it goes on to say, "more importantly, the report charges that leaders in a division Perez heads have failed to do enough to overcome years of poisonous strife between a faction of the voting rights staff which favor litigation on behalf of minority groups and another which believe the Department should do more to protect the rights of white voters." And then it goes on. We'll just submit it for the record.

[See Appendix I]

So, I don't know that he's been as great, but I think we're going to have to look at that. This—he's not before this committee, but I just couldn't not say something. He is not subject to sainthood for all the things that he's done because there are some questions in the report.

The Senate will have to decide or the administration will have to decide if they send his name up. We're not going to get into that, I'm not going to make a comment whether he should. But I just think the record ought to show we will put in statements.

This place ought to be so non-political and non-partisan and not—with that I yield to Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. You can go first.

Mr. WOLF. Go Serrano. Go. Go.

Mr. SERRANO. First of all I apologize for being late. I was cohosting the Supreme Court before the Financial Services Sub-

committee. And I ask them every year if someone born in Puerto Rico can serve as President, because there are some legal scholars who say you can and I don't want to have an exploratory committee without finding that out.

They came very close to giving me an opinion and the opinion was hovering around why not, you know——

Look, I know that this whole Voting Rights Section is a, Civil Rights Division is a touchy subject, but it's one that has to be discussed. Your report found that the culture had changed dramatically recently and my question to you is, do you feel that there's more that has to be done and more that has to be investigated for you to be fully satisfied? Or are you fully satisfied now that this where it should be?

Mr. HOROWITZ. You know, I think as we outlined in the report I think from out standpoint, given the continued concerns that were raised to us and what we saw over time, that there does need to be more done. There does need to be more action taken.

There really, as we lay out, again, we have concerns that people need to understand what it means to be a professional in that section, what the implications of their attacks on their colleagues are, on postings, whether it's off work or on work time. And so that's important for leadership to undertake that effort.

Mr. SERRANO. But does that require further investigation or is your report put in place also—or have they put in place solutions?

Mr. HOROWITZ. No, I think at some point we decided along the way we had to finish our investigation. We can only do so much investigating. It's really up to leadership to then take the action and that's what we've tried to do here, lay out the concerns we had. And now it's up to the Department, the Administration to look at this report and decide what steps they're going to take to try and address the issues we've raised.

Mr. SERRANO. And certainly, the questions my colleague was asking, Mr. Schiff, and the question that you were asked before, could be asked. But, you know, there's two concerns that I have. I have, obviously, the concern that we know about, which other people may not have written about yet, about, you know, what is happening in this country in terms of voting.

We have come a long, long way from when I first entered politics 39 years ago when I was a teenager, we all know that. To get those long lines where either that administrating or administration or the like or something else, we need to know that. The laws being passed in different states that may make voting harder for some people, those are not perhaps just things that are happening by coincidence. We need to look at that.

And I look forward to what I believe will be comprehensive immigration reform. It, indeed, puts people on the path to citizenship, it means a lot more people joining the rolls and what would that mean? What will the system provide for their protection? After all, we Americans are a very interesting group of people of any race. One is we celebrate people throughout the world saying we want to be free.

I think sometimes we forget that they may be saying we want to be like you. Maybe that's arrogance on my part. We want to be like you, what does you mean? It means democracy, it means free-

dom, it means the ability to vote and have your vote cast and counted.

And I think sometimes we took the struggles of the past for granted and we kind of said, well, everything's in place, and we need to look at it again. So, I commend the work you've done and I urge you to continue to be on top of this to make sure that it is the agency that is has to be, and that it is the Department that it has to be and that it continues to serve the public good.

Mr. FATTAH. Mr. Chairman, if I could? You know, I think that we're talking in riddles and I want to make sure that lay people and that the public clearly get a sense of exactly what's going on here. Because you say, well, you don't see this problem in your shop or in other departments where people have had this kind of severe friction.

So, then it comes to one's mind, like, well, why would this be so? Right? So, I think that I want to take a minute and just put this into some perspective.

Not out of your 200 and plus pages, but out of just a historical sense of how we got to this moment. See, because when people got together in Philadelphia and put together the nation's founding documents and they—which set forth some very significant ideals, but it did leave some people out of the mix, in terms of the right to vote.

So, women didn't have the right to vote, African Americans didn't have the right to vote and Serrano didn't have the right to vote because he was, you know, he was in Puerto Rico, right? So, the reason that in the Department of Justice there is a Civil Rights Division is because at some point the Congress, with some very courageous people, including our Chairman, voted for this Civil Rights Act—voted for the Voting Rights Act and created this operation over there to protect people's rights who historically have been denied these rights.

And then we got an administration that came along about the time of the beginning of your report and they had a much different view of this, and they took it upon themselves to purposely seed into the hiring in this department, people who didn't believe that that department should be there to protect people's right to vote.

And that's what created a large part of the friction that you document over these ten year periods. And so, I don't want people to just kind of suspect that you somehow, you just got a group of people together in a—they just didn't like each other. No. There was this effort to orchestrate the career hiring in a way in which you would end up with a voting rights section who—people who were there who didn't have an interest in protecting people's right to vote. Or sought dramatically differently if you want to make a political statement about it.

So, that's what has created this. But since this new administration's come in, your report documents that there haven't been political hirings, that there hasn't been this continuation of this process. So, we're happy that we're going forward and we don't have to mention names, but the point is that we should give some explanation for why we're at this moment and why out of the entire operation of the government you've got one agency in which for a period of a good eight years or so, people were at each other's throats.

So, I thank you for your report. I thank you for your testimony. And I thank you for your continued service. Hopefully we'll get a chance to see you again.

Mr. WOLF. Thank you. I agree with my friend there and in the words of—when I got out of high school, I didn't go to college for a couple years. I used to walk through the Independence Hall and rub my hand across the Liberty Bell. It was then out on a platform, and, you know, the words of—drafted by Jefferson, who had some problems of his own, you know, "All men are created equal, endowed by their creator." So, I completely agree, but that's why I wanted to do something.

When I saw those guys standing outside a polling booth in my hometown, Philadelphia, where I was born and raised, it bothered me. You know, and if it had been three white guys down in Philadelphia, Mississippi—there is a Philadelphia, Mississippi, I would have felt equally passionate because when I went to school down there I saw things that were terrible.

And so just on a—and I didn't mention the Perez name, but I've got to just for record because I'm not going to be a wallflower on something I believe in. You did say, "therefore we did not find that Perez intentionally mislead the commission." But you also went on to say, "nevertheless, given he was testifying as a Department witness before the Commission, we believe that Perez should have sought more details from King and Rosenbaum about the nature—and I didn't want to get into names, but—as the nature and extent of the participation of political employees in a NBPP decision, in advance of his testimony before the Commission. The issue of whether political appointees were involved in this matter had already engendered substantial controversy and Perez told us that he expected questions about it would arise during his testimony."

And then you go on to say, "In his OIG interview Perez said he did not believe that these incidents constituted political appointees being involved in the decision.

We believe that these facts, evidence quote and you put it in quote, "involvement" in the decision by political appointees within the ordinary meaning of that word and that Perez's acknowledgment in his statements on behalf of the Department that political appointees were briefed on and could have overruled this decision did not capture the full extent of that involvement."

And in all fairness, if Mr. Schiff wants to—or anybody else wants to make any other comments before we adjourn, I'll be glad to——

Mr. SCHIFF. Thank you, Mr. Chairman, and it wasn't my intention to get into the weeds of this, but if we are in the weeds, I do want to point out as I read your report——

Mr. WOLF. Well, we can have a separate hearing on this whole thing. I didn't want to make this the subject.

Mr. FATTAH. Mr. Chairman, it is not our desire to have a separate hearing, just a clear record.

Mr. SCHIFF. I agree with my ranking member and the Chairman. I appreciate your report. As I understand it, correct me if I'm wrong, the decision in terms of the case the Chairman mentioned was made by career attorneys, not by the political appointees and that decision was made before the Assistant AG took over; am I right?

Mr. HOROWITZ. The decision was made before the Assistant Attorney General Perez was confirmed.

Mr. SCHIFF. That means before he took over, right?

Mr. HOROWITZ. Before he took over.

Mr. SCHIFF. Yes.

Mr. HOROWITZ. The decision was made in May, he came on board in September, October of 2009. As to how the decision was made, it was ultimately the decision of the Acting AAG, she had some parameters placed on her by higher level officials in the Department, but ultimately it was her decision.

Mr. SCHIFF. No, we're just trying to clarify that this young man who—since we have a new Pope, the Chairman says he's not a saint. He could be a saint today if the Pope decides, right? But, the point is, is that he was not—he wasn't confirmed, he didn't make this decision.

Mr. HOROWITZ. Correct.

Mr. SCHIFF. That's it.

Mr. HOROWITZ. Correct.

Mr. SCHIFF. That's all, Mr. Chairman.

Mr. WOLF. Okay. With that we'll also put some things in the record at this time. And I think the selection of the new Pope is a great Pope because he cares about the poor and I think on that we will just adjourn.

QUESTIONS FOR THE RECORD—MR. WOLF

PRISON RAPE ELIMINATION ACT

Question. During the discussion at the hearing before the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, Chairman Wolf asked Inspector General Horowitz about the Office of Inspector General's investigative efforts with respect to the enforcement of the Prison Rape Elimination Act. In particular, the Chairman asked how many complaints had been made and whether there were any enforcement actions taken.

Answer. The Department of Justice (Department) Office of the Inspector General (OIG) has long considered sexual abuse of Federal inmates to be a high-priority matter, and our Investigations Division has devoted substantial resources to investigating staff on inmate criminal and non-criminal sexual abuse cases (the OIG generally investigates staff-on-inmate sexual abuse, while the Federal Bureau of Investigation generally handles inmate-on-inmate criminal sexual abuse). As a federal corruption prosecutor and supervisor in the U.S. Attorney's Office for the Southern District of New York, I personally witnessed this commitment by the OIG and oversaw OIG investigations of sexual abuse against federal inmates by BOP staff, and I am committed to continuing the OIG's aggressive pursuit of such wrongdoing by institution staff against Federal inmates.

The OIG's concern about the need for the aggressive investigation and prosecution of staff-on-inmate criminal sexual abuse was demonstrated in a report we issued in April 2005, which concluded that the penalties under federal law for staff sexual abuse of federal prisoners without the use of threat or force were too lenient and resulted in U.S. Attorneys declining to prosecute such cases. Congress subsequently passed two laws which increased the maximum criminal penalty for certain sexual abuse crimes, made those crimes felonies instead of misdemeanors, and extended federal criminal jurisdiction to all personnel working in private prisons under contract to the federal government. In a follow up report that the OIG issued in September 2009 (which can be found at: `http://www.justice.gov/oig/reports/plus/e0904.pdf`), we found that allegations of sexual abuse by institution staff doubled from Fiscal Year (FY) 2001 through FY 2008, and that the percentage of cases accepted for prosecution rose in the years after the law was changed to increase penalties. The OIG made 21 recommendations to improve the Department's efforts to prevent, detect, and respond to staff sexual abuse, as well as to better investigate, discipline, and prosecute Federal personnel that sexually abuse inmates. The Department has addressed 18 of the recommendations, and three remain open. The OIG continues to follow up on these 3 recommendations.

To fulfill the OIG's obligations outlined by statute in the Prison Rape Elimination Act (PREA), the OIG and BOP recently established a framework to ensure that Federal inmates have a confidential way to report allegations of sexual abuse and misconduct. Inmates can now report inmate-on-inmate and staff-on-inmate complaints by sending an e-mail directly to the OIG Investigations Division (without any monitoring by the Bureau of Prisons). Inmates may also continue to submit complaints (as they have in the past) through postal mail to the OIG, as well as through the OIG's internet website and through the BOP facility. The OIG also has worked with the Federal Bureau of Prisons to ensure that inmates are aware of the proper ways to report these allegations through posters, an inmate handbook, and notices at the prison facilities.

The OIG's commitment to addressing prison sexual abuse cases is demonstrated by our thorough, vigorous review of inmate complaints within the OIG's jurisdiction. In sum, despite the fact that these cases are often difficult to bring, our general practice is to open an investigation and commit OIG resources whenever there is credible evidence of sexual abuse by a BOP or USMS staff or contractor against a federal inmate. Between FY 2009 and FY 2012, the OIG processed approximately 963 allegations of sexual abuse by BOP and USMS staff and contractors that were within the OIG's jurisdiction. However, many of those complaints, following an initial review by the OIG, involved conduct that could not be substantiated, would not constitute a violation of law or BOP policy even if true, were later retracted by the complainant, or involved claims by a third party (such as a relative) that were later denied by the alleged victim. After a thorough review of the information available, the OIG opened investigations involving 170 of these allegations. These 170 investigations resulted in the criminal prosecution of 42 individuals (37 guilty pleas, 3 trial convictions, 1 pretrial diversion, and 1 dismissal), and 102 administrative actions against BOP or USMS employees or contractors (resulting in resignations, terminations, suspensions, retirements, and letters of caution). The extraordinary results in these very difficult cases are the result of the OIG's devotion of substantial resources to them and, most importantly, the diligent and dedicated work of our special agents.

We continue to receive many allegations involving sexual abuse of federal inmates and our work in this area continues. From the beginning of FY 2013 through August 13, 2013, the OIG processed an additional 285 allegations of sexual abuse by BOP and USMS staff and contractors within the OIG's jurisdiction and initiated 33 investigations into these allegations.

Here are examples of some of the egregious cases that the OIG has investigated in this area over the past few years:

- A female BOP correctional officer was indicated for having sexual inter-

course with a male inmate while working at a correctional facility. The correctional officer admitted to providing the inmate with contraband (tobacco), but denied receiving anything of value in return. The jury convicted her for violating Title 18 U.S.C. §2243(b) (Sexual Abuse of a Ward) and she was sentenced to 24 months' probation and ordered to perform 100 hours of community service.

- A male BOP physician's assistant was indicted on seven counts of abusive sexual contact. Under the guise of conducting physical examinations, the physician's assistant sexually assaulted five female inmates. He was convicted by a jury of one count of sexual abuse of a ward, and was sentenced to 15 months' imprisonment and 60 months' supervised release.

- A female BOP correctional officer was indicted on 3 counts of having sexual contact with a male inmate, and pled guilty to one count of having sex with the inmate in violation of 18 USC 2243(b) (Sexual Abuse of a Ward) and was sentenced to 2 months of home confinement, 2 years' probation, and was ordered to perform 250 hours of community service.

- A male BOP medical doctor pled guilty to three counts of sexual abuse of a ward. In his plea, the doctor admitted to engaging in sexual acts with three male inmates. He was sentenced to 25 months' imprisonment, 2 years' supervised release, and was ordered to perform 200 hours of community service.

REPROGRAMMING OF ASSET FORFEITURE FUNDS (SUPER SURPLUS) FOR THOMSON PRISON FACILITIES

Question. During the discussion at the hearing before the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, Chairman Wolf asked Inspector General Horowitz about for an explanation of the Department's policies and practices regarding the declaration of a Super Surplus in its Asset Forfeiture Fund.

Answer. It is our understanding that, by statute (28 U.S.C §524(c)(8)(E)), Congress authorized the Attorney General to use excess unobligated balances in the Assets Forfeiture Fund (AFF) for Federal law enforcement, litigative, prosecutive, and correctional activities, or any other congressionally authorized purpose of the Department of Justice, subject to Congressional notification. We further understand that the excess unobligated balance in the AFF is calculated by the Department based on the AFF's actual or expected

unobligated balance at the end of the fiscal year, less the Program's current year operational needs, anticipated rescissions for the subsequent year, and any estimated supplemental needs (such as due to the budgetary effects of sequestration). Once calculated by the Department, this excess unobligated balance is commonly known as a Super Surplus. We understand that the Attorney General can calculate and declare the Super Surplus at any point during the fiscal year without prior Congressional notification; however, prior to using the Super Surplus funds, the Attorney General must notify Congress of his intention to use them.

From FY 1998 through FY 2011, the annual amount of the declared Super Surplus by the Department has ranged from $54,000 to $78.8 million. We understand that the Department has used the Super Surplus funds for a variety of purposes, including information technology, physical security, safety equipment purchases, additional funding for certain law enforcement programs, housing and detention related costs, and to a lesser extent, to cover various Department rescissions. We are not aware of the Department having previously used the Super Surplus funds to purchase a prison facility. The FY 2012 Super Surplus was declared by the Department to be $151 million, and this amount provided much of the $165 million that was then used by the Department to purchase the Thomson Prison in Illinois.

QUESTIONS FOR THE RECORD—MR. ADERHOLT

REPORT ON IMPROPER HIRING PRACTICES IN THE JUSTICE MANAGEMENT DIVISION (JMD)

Question. In your testimony, you state that there were eight cases of improper hiring practices (nepotism) found within JMD. Were all of these new cases that had not previously been exposed in the two prior reports (2004 and 2008) from the IG on this division? Were these cases that had happened during the previous reporting and just not discovered, or had the hirings all been done since 2008?

Answer. All of the cases described in our 2012 Report Regarding Investigation of Improper Hiring Practices in the Justice Management Division related to hiring practices that occurred after the issuance of our two prior reports.

Question. You further state that your recommendations were being made in an effort to "ensure that these problems were finally remedied and that we do not need to issue a fourth report on the subject." When do you expect to re-audit this division to ensure that these recommendations are being fully implemented?

Answer. The OIG will follow its practice of seeking confirmation that the recommendations in our report have been fully and effectively implemented prior to our designating the recommendations as closed. The OIG recently received a report from the Department's Justice Management Division regarding its progress in implementing our recommendations, and the OIG is currently reviewing this report. In light of the recurring issues in this area, we plan to carefully monitor the Department's actions to remediate the problems the OIG identified.

WHISTLEBLOWER OMBUDSMAN

Question. You created this new position for the DOJ's IG office to ensure "that whistleblowers in the Department can step forward and report fraud, waste and abuse without fear of retaliation." You state in your testimony that you have already seen how important this role has been to the Department. Can you tell the Committee how many "whistleblowing" calls this office has already received and a general scope of what is being reported? Or, do the calls come through some standard DOJ IG process and the Ombudman's office keeps an eye on these cases?

Answer. The OIG Whistleblower Ombudsperson program (WBO) is primarily focused on educating Department employees and managers about the rights of whistleblowers and protections against retaliation. The WBO also works to ensure that the OIG reviews whistleblower complaints in a timely manner, and responds accordingly to the whistleblowers. The information that the OIG has received from whistleblowers runs the full gamut of allegations of waste, fraud, abuse, and misconduct in connection with Department programs and employees. The complaints generally are received by or directed to the OIG Investigations Division, either through the telephone or online referrals. The Ombudsperson then reviews the progress of the investigations and inquiries, and becomes involved as necessary to ensure the appropriate handling of the cases. The OIG is in the process of implementing an automated mechanism to assist in tracking whistleblower matters and anticipates revising its website to highlight the WBO program. In FY 2012, the OIG received over 5,000 complaints from all DOJ employees through our hotline, online reporting system, and referrals from other Department components, though this figure includes persons who would not be considered whistleblowers under the relevant statutory provisions and will not be counted under our revised tracking system.

REPORT ON VOTING RIGHTS SECTION OF THE CIVIL RIGHTS DIVISION

Question. Your report indicates that at least two individuals from the Voting Rights Section who were found to be posting politically charged and racially-motivated statements on public blogs from their office computers are still employed at the DOJ. Is their employing office investigating these employees or have they been cleared of these charges? Or, has their employing office chosen not to pursue these individuals?

Answer. The OIG referred the two employees in question to the Department for administrative disciplinary review. According to a memorandum received from the Civil Rights Division in late July 2013, the Department has issued notices of proposed discipline to both employees. The OIG is reviewing the proposed discipline and intends to continue to closely monitor the referrals to the Department.

Question. When do you anticipate a further audit of this office to ensure that they are fully implementing the recommendations outlined in your report?

Answer. The OIG will follow its practice of seeking confirmation that the recommendations in our report have been fully and effectively implemented prior to our designating the recommendations as closed. None of the recommendations have been closed at this time. On July 22, 2013, the OIG received an update from the Department on its implementation of our recommendations and, given the significance of the issues we identified, we plan to carefully monitor the Department's actions in remediating these areas of concern.

TUESDAY, MARCH 19, 2013.

FEDERAL BUREAU OF INVESTIGATION

WITNESS

HON. ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. WOLF. Mr. Director, we have votes coming up in a series, so I'm not going to have an opening statement other than to say that I want to take this opportunity to thank you and the men and women of the Bureau. I think you've done an excellent job, I think you've done an outstanding job, and I just want you to know that I personally appreciate it, and I think so do the members up here and the American people. So I want to thank you and thank your family and also thank the men and women of the Bureau. I think you have represented them well, and, we owe you a debt of gratitude. And with that I'll just turn to Mr. Fattah.

Mr. FATTAH. I will also forfeit the opportunity to have an opening statement in lieu of the Director's time, and we can proceed, but I share and join in the remarks of the chairman.

Mr. WOLF. Pursuant to the authority granted in Section 191 of Title 2 of the United States Code, Clause 2(m)(2) of House Rule XI, today's witness will be sworn in before testifying.

[Witness sworn.]

Mr. WOLF. Let the record reflect that the witness answered in the affirmative.

You may proceed as you see appropriate, and I'll try to, on the second phase, go and vote and let you, whoever's here, so we can keep on going. But with that you just proceed.

OPENING STATEMENT—DIRECTOR MUELLER

Mr. MUELLER. I have a relatively short opening statement that I would like to give, Mr. Chairman. I thank you for your kind words. It's certainly not about me, it is about the men and women of the FBI who have accomplished so much in the last decade. And I thank you for the opportunity to be here today to represent the men and women of the FBI, but I also want to start by thanking this committee, and yourself in particular, for the extraordinary support that you have given to the FBI over the last decade.

We live in a time of diverse and persistent threats from terrorists, spies, and cyber criminals. At the same time, we face a wide range of criminal threats, from white collar crime and public corruption, to transnational criminal syndicates, migrating gangs, and child predators. And just as our national security and criminal threats constantly evolve, so, too, must the FBI to meet and counter these evolving threats. We look forward to one additional challenge, certainly this year, and that is the ability to maintain

our current capabilities to counter these threats during a time of constrained budgets.

Briefly, I will spend a moment talking about our highest priority national security and criminal threats. Terrorism remains our top priority. Terrorists with global reach and global ambitions seek to strike us at home and abroad, and they operate today in more places and against a wider array of targets than they did a decade ago. And we have seen an increase in cooperation among terrorist groups and an evolution of their tactics and communications.

Within the past decade core Al Qaeda has been weakened, but the group remains committed to attacks against the West. Al Qaeda affiliates and surrogates, in particular Al Qaeda in the Arabian Peninsula, now represent the top counterterrorism threat to the Nation. In light of the recent attacks in North Africa, we are focused more than ever on emerging extremist groups capable of carrying out terrorist attacks.

Of course we also remain concerned about the threat from homegrown violent extremists. Over the past few years we have seen increased activity from extremists inspired through the Internet and individuals tied to domestic terrorist groups who have continued to pose a persistent threat. And these lone individuals present unique challenges for law enforcement as they have no typical profile and their experiences and motives are often distinct.

Now, for a moment I'd like to discuss the cyber threat, which has evolved significantly over the past decade and now cuts across all FBI programs. Cyber criminals have become increasingly adept at exploiting weaknesses in our computer networks, and once inside they can exfiltrate government and military information, as well as our valuable intellectual property. We also face persistent threats from hackers for profit, organized criminal cyber syndicates, and ideologically driven hacktivist groups.

As I have said in the past, and I believe this to be the case, the cyber threat will equal or even eclipse the terrorist threat in the future. In response to this we are strengthening our cyber capabilities in the same way we enhanced our intelligence and national security capabilities in the wake of the September 11th attacks. We have focused our Cyber Division on addressing computer intrusions and network attacks. The cyber squads in each of our offices have become cyber task forces, and we are collaborating and sharing with our Federal partners more than ever before, particularly in the context of the National Cyber Investigative Joint Task Force, which now has 19 law enforcement, military, and intelligence agencies working together to stop current attacks and prevent them in the future.

But we also recognize that the private sector is the essential partner if we are to succeed in defeating the cyber threat. We have undertaken a number of initiatives to build better bridges with the private sector in order to protect our critical infrastructure and to share threat information, such as the Domestic Security Alliance Council and InfraGard.

As noteworthy as these outreach programs may be, we must do more. We need to shift to a model of true collaboration with the private sector, building structured partnerships in the government and in the private sector. We must develop channels for sharing in-

formation and intelligence more quickly and effectively between these two enclaves.

Turning to our criminal programs, and to describe a few of the most significant criminal threats facing our Nation, violent crime and gang activities continue to exact a high toll on our communities. According to the National Gang Threat Assessment, there are more than 30,000 gangs with more than 1 million members active in the United States today. Through our Safe Streets and Safe Trails Task Forces, we identify and target the most serious gangs operating as criminal enterprises.

The continued violence on the Southwest border also remains a significant threat, and we rely on our collaboration with the DEA, OCDETF Fusion Centers, and the El Paso Intelligence Center to track and disrupt this threat. At the same time the FBI continues to be vigilant in its efforts to remove predators from our communities and to protect our Nation's children.

Our ready response teams are stationed across the country to react quickly to child abductions, and through our Child Abduction Rapid Deployment teams, the Innocence Lost and Innocent Images initiatives, we are working with our partners to keep our children safe from harm.

Let close by saying a few words about the impact of sequestration. According to our current estimates, sequestration would reduce the Bureau's budget by more than $550 million for the remainder of this fiscal year. Because 60 percent of the FBI's budget pays for personnel, we have planned for the possibility of furloughs. Any furlough would pose a risk to FBI operations, in particular, in the areas of counterterrorism and cyber. Accordingly, we are exhausting all other options first in an effort to reduce any potential furloughs for our workforce this fiscal year, understanding that we are looking at furloughs down the road, particularly in fiscal year 2014.

In short, our people are our most important asset, our most important resource. Without them, we risk a slippage in ongoing operations and investigations that could undermine national security and the enforcement of the Federal criminal statutes.

The impact on nonpersonnel resources will also be significant. Among other impacts, the FBI will have to forgo or delay long-needed IT upgrades, we'll be unable to reduce our TEDAC backlog as quickly as we had planned, and fewer databases will be pulled into our federated search tool capacity for use by Agents and Analysts. Additionally, we will be unable to obtain all of the technical surveillance tools that we need to keep pace with our adversaries.

We will also face challenges in meeting our mission requirements in the areas of increasing threats, such as cyber. We understand there will be budget reductions this year and the years to come, and we would like to work with this Subcommittee to mitigate the most significant impacts of those cuts.

Chairman Wolf, Ranking Member Fattah, and members of the Subcommittee, I'd like to thank you again for your support of the men and women of the FBI and its mission. Our transformation over the past decade would not have been possible without your cooperation, assistance, and support. I'd be happy to answer any questions you have.

STATEMENT OF ROBERT S. MUELLER, III
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

March 19, 2013

Good morning Chairman Wolf, Ranking Member Fattah, and members of the Subcommittee. I look forward to discussing the FBI's efforts as a threat-driven, intelligence-led organization that is guided by clear operational strategies and priorities.

The FBI has established strong practices for sharing intelligence, leveraged key technologies to help us be more efficient and productive, and have hired some of the best to serve as Special Agents, Intelligence Analysts, and professional staff. We have built a workforce and leadership cadre that view change and transformation as a positive tool to keeping the FBI focused on the key threats facing our Nation.

Just as our national security and criminal adversaries and threats constantly adapt and evolve, so must the FBI be able to quickly respond with new or revised strategies and operations to counter these threats. Looking forward, a key challenge facing the FBI will be maintaining its current capabilities and capacities to respond to these threats at a time when the budgetary environment remains constrained.

We live now, and will for the foreseeable future, in a time of acute and persistent threats to our national security, economy, and community safety from terrorists, foreign adversaries, criminals and violent gangs, and cyber attackers. This Subcommittee understands these threats – and the consequences of failing to address them. I look forward to working with the Subcommittee to ensure that the FBI maintains the intelligence, investigative, and infrastructure capabilities and capacities needed to deal with these threats and crime problems within the current fiscal climate. One lesson we have learned is that those who would do harm to the Nation and its citizens will exploit any weakness they perceive in the ability and capacity of the U.S. Government to counter their activities. We must identify and fix those gaps while not allowing new weaknesses or opportunities for terrorists, cyber criminals, foreign agents, and criminals to exploit.

The threats facing the homeland, briefly outlined below, underscore the complexity and breadth of the FBI's mission to protect the nation in a post-9/11 world.

National Security Threats

Terrorism: We have pursued those who committed, or sought to commit, acts of terrorism against the United States. Along with our partners in the military and intelligence communities, we have taken the fight against terrorism to our adversaries' own sanctuaries in the far corners of the world – including Iraq, Afghanistan, Pakistan, Southwest Asia, and the Horn of

Africa. We have worked to uncover terrorist sleeper cells and supporters within the United States and disrupted terrorist financial, communications, and operational lifelines at home and abroad. We have built strong partnerships with law enforcement in countries around the world.

The threat from terrorism remains complex and ever-changing. We are seeing more groups and individuals engaged in terrorism, a wider array of terrorist targets, greater cooperation among terrorist groups, and continued evolution and adaptation in tactics and communication.

Threats from homegrown terrorists are also of great concern. These individuals are harder to detect, easily able to connect with other extremists, and – in some instances – highly capable operationally. There is no typical profile of a homegrown terrorist; their experiences and motivating factors are distinct.

Radicalization to violence remains an issue of great concern. No single factor explains why radicalization here at home may be more pronounced than in the past. Several factors may help frame the current dynamic. First, American extremists appear to be attracted to wars in foreign countries. We have already seen a number of Americans travel overseas to train and fight with extremist groups. The increase and availability of extremist propaganda in English perpetuates the problem.

The Internet has had a profound impact on radicalization. It has become a key platform for spreading extremist propaganda and has been used as a tool for terrorist recruiting, training, and planning. It also serves as a means of social networking for like-minded extremists.

While we have had success both in disrupting plots and obtaining convictions against numerous terrorists, we have seen an increase in the sources of terrorism, an evolution in terrorist tactics and means of communication, and a wider array of terrorist targets here at home. All of this makes our mission that much more difficult.

Foreign Intelligence. While foreign intelligence services continue traditional efforts to target political and military intelligence, counterintelligence threats now include efforts to obtain technologies and trade secrets from corporations and universities. The loss of critical research and development data, intellectual property, and insider information poses a significant threat to national security.

Each year, foreign intelligence services and their collectors become more creative and more sophisticated in their methods to steal innovative technology, which is often the key to America's leading edge in business. Last year alone, the FBI estimates that pending economic espionage cases cost the American economy more than $13 billion. In the last four years, the number of arrests the FBI has made associated with economic espionage has doubled; indictments have increased five-fold; and convictions have risen eight-fold.

As the FBI's economic espionage caseload is growing, the percentage of cases attributed to an insider threat has increased, meaning that individuals trusted as employees and contractors are a growing part of the problem. The insider threat, of course, is not new, but it is becoming more prevalent for a host of reasons, including that theft of company information is a low-cost

route to avoid investment in research; the ease of stealing information that is stored electronically, especially when one has legitimate access to it; and the increasing exposure of businesses to foreign intelligence services as joint ventures grow and businesses becomes more global.

To address the evolving insider threat, the FBI has become more proactive to prevent losses of information and technology. The FBI continues expanding outreach and liaison alliances to government agencies, the defense industry, academic institutions, and, for the first time, to the general public, because of an increased targeting of unclassified trade secrets across all American industries and sectors.

Through these relationships, the FBI and its counterintelligence partners must continue our efforts to identify and prevent the loss of sensitive American technology.

Intelligence: Since September 11, 2001, we have improved our intelligence collection and analytical capabilities across the board. Today, we are collecting and analyzing intelligence to better understand all threats – those we know about and those that have not yet materialized. We recognize that we must always look for ways to refine our intelligence capabilities to stay ahead of these changing threats. The FBI recently restructured its Directorate of Intelligence to maximize organizational collaboration, identify and address emerging threats, and more effectively integrate intelligence and operations within the FBI. With this new structure, each office can better identify, assess, and attack emerging threats.

Cyber: As this Committee knows, the cyber arena has significantly changed over the last decade. Cyber attacks and crimes are becoming more commonplace, more sophisticated, and more dangerous. The scope and targets of these attacks and crimes encompass the full range and scope of the FBI's criminal investigative and national security missions. Traditional crime, from mortgage and health care fraud to child exploitation, has migrated online. Terrorists use the Internet to recruit, to communicate, to raise funds, to train and propagandize, and as a virtual town square, all in one. On a daily basis, we confront hacktivists, organized criminal syndicates, hostile foreign nations that seek our state secrets and our trade secrets, and for profit actors willing to hack for the right price.

Since 2002, the FBI has seen an 84 percent increase in the number of computer intrusions investigations opened. Hackers – whether state sponsored, criminal enterprises, or individuals – constantly test and probe networks, computer software, and computers to identify and exploit vulnerabilities. We are working with our partners, both foreign and domestic, to develop innovative ways to identify and confront the threat as well as mitigate the damage. There is always more work to be done, but we have had some success, including the 2011 takedown of Rove Digital, a company founded by a ring of Estonian and Russian hackers to commit a massive Internet fraud scheme.

The Rove Digital scheme infected more than four million computers located in more than 100 countries with malware. The malware secretly altered the settings on infected computers, enabling the hackers to digitally hijack Internet searches using rogue servers for Domain Name System (DNS) routers and re-routing computers to certain websites and ads. The company

received fees each time these web sites or ads were clicked on or viewed by users and generated $14 million in illegitimate income for the operators of Rove Digital.

Because Estonia has improved its domestic laws, we were able to work with our law enforcement counterparts and our private industry partners to execute a takedown of this criminal organization. Following the arrest of several co-conspirators in Estonia, teams of FBI agents, linguists, and forensic examiners assisted Estonian authorities in retrieving and analyzing data that linked the co-conspirators to the Internet fraud scheme. At the same time, we obtained a court order in the United States to replace the rogue DNS servers with court-ordered clean servers.

In this case, we not only took down the criminal organization, but we also worked with our partners in the Department of Homeland Security (DHS) and other agencies to mitigate the damage. Seven individuals have been indicted in the Southern District of New York in this case: six in Estonia and one in Russia. The United States has sought extradition of all six Estonian subjects. To date, two of them have been remanded to U.S. custody. One pleaded guilty on February 1, 2013.

We have also worked against infrastructure we believe has been used in Distributed Denial of Service (DDOS) attacks, preventing it from being used for future attacks. Since October, the FBI and the Department of Homeland Security (DHS) have released nearly 130,000 Internet Protocol (IP) addresses determined to be infected with DDOS malware. We have released this information through Joint Intelligence Bulletins (JIBs) to 129 countries. These JIBs are released by both the DHS' Computer Emergency Readiness Team (CERT) mechanisms as well as by our Legal Attachés to our foreign partners. These actions have enabled our foreign partners to take action and reduced the effectiveness of the botnets and the DDOS attacks.

Just as the FBI has transformed its counterterrorism and intelligence programs to deal with an evolving and adapting threat, the Bureau is strengthening its cyber program and capabilities. Computer intrusions and network attacks are the greatest cyber threat to our national security. To better prioritize our cyber resources, last year we focused our Cyber Division on computer intrusions and moved all other cyber-facilitated crimes that are perpetrated over the internet to our Criminal Investigative Division. This allows the FBI to leverage resources that already exist to counter the ever-increasing cyber threat.

The FBI has also focused on hiring specialized personnel to address this growing threat. The FBI now has more than 1,000 specially trained agents, analysts, and digital forensic examiners that run complex undercover operations and examine digital evidence. The FBI is the executive agent of the National Cyber Investigative Joint Task Force, which includes representatives from 19 law enforcement and intelligence agency partners. The task force operates through Threat Focus Cells – smaller groups of agents, officers, and analysts focused on particular threats.

U.S. law enforcement and intelligence communities, along with our international and private sector partners, are making progress. Technological advancements and the Internet's expansion continue to provide malicious cyber actors the opportunity to harm U.S. national

security and the economy. Given the consequences of such attacks, the FBI must be able to keep pace with this rapidly developing and diverse threat.

TEDAC: The FBI established the Terrorist Explosive Devices Analytical Center, or TEDAC, in 2003. Over the past ten years, it has proved to be a valuable tool supporting the military, homeland security, international partners, intelligence, and law enforcement communities. Prior to TEDAC, no single part of our government was responsible for analyzing and exploiting intelligence related to terrorist Improvised Explosive Devices (IEDs). Today, TEDAC supports the efforts of our entire government, from law enforcement to intelligence to the military, in developing and sharing intelligence about terrorist explosive devices.

Nearly all IEDs of interest to the United States Government pass through TEDAC, allowing our technicians, examiners, scientists, and intelligence analysts to see the full spectrum of devices and to recognize trends in their construction and components. This, in turn, helps us to disarm or disrupt these devices; to link IEDs to their makers; to develop new countermeasures and most importantly, to prevent future attacks.

TEDAC has received more than 95,000 submissions since its creation. By forensically and technically exploiting IEDs and their components, scientists and engineers are able to make matches and connections between seemingly unrelated IEDs. These connections have supplied valuable information to our war fighters on the front lines, as well as law enforcement and intelligence personnel protecting the homeland. TEDAC's work has resulted in actionable intelligence and progress in the fight against increasingly sophisticated and deadly explosive devices.

Thanks to the resources provided by this committee the FBI has begun construction of a new TEDAC facility at Redstone Arsenal in Huntsville, Alabama which is expected to be complete by February 2014. This new facility will allow TEDAC operations to be collocated at a single site, allowing for more efficient and integrated forensic and intelligence activities.

Criminal Threats

The Nation faces many criminal threats, from complex white-collar fraud in the financial, health care, and housing sectors to transnational and regional organized criminal enterprises to violent gangs and crime to public corruption. Even these threats have changed significantly since 2002. Criminal organizations – domestic and international – and individual criminal activity represent a significant threat to our security and safety in communities across the Nation. I would like to briefly highlight a number of these criminal threats – and FBI capabilities for dealing with these threats -- for the Subcommittee.

Gangs and Violent Crime: Violent crimes and gang activities exact a high toll on victimized individuals and communities. There are approximately 33,000 violent street gangs, motorcycle gangs, and prison gangs with about 1.4 million members who are criminally active in the U.S. today. A number of these gangs are sophisticated and well organized; many use violence to control neighborhoods and boost their illegal money-making activities, which include robbery, drug and gun trafficking, fraud, extortion, and prostitution rings. Gangs do not limit

their illegal activities to single jurisdictions or communities. FBI is able to work across such lines and, therefore, brings particular value to the fight against violent crime in big cities and small towns across the Nation. Every day, FBI Special Agents work in partnership with state and local officers and deputies on joint task forces and individual investigations.

FBI joint task forces – Violent Crime Safe Streets, Violent Gang Safe Streets, and Safe Trails Task Forces – focus on identifying and targeting major groups operating as criminal enterprises. Much of the Bureau's criminal intelligence is derived from our state, local, and tribal law enforcement partners, who know their communities inside and out. Joint task forces benefit from FBI surveillance assets and its sources track these gangs to identify emerging trends. Through these multi-subject and multi-jurisdictional investigations, the FBI concentrates its efforts on high-level groups engaged in patterns of racketeering. This investigative model enables us to target senior gang leadership and to develop enterprise-based prosecutions.

Violence Along the Southwest Border: Violence and corruption associated with drug trafficking in Mexico continues to be a significant issue – not only along the Southwest Border, but in many communities throughout the U.S. where Mexican drug traffickers have established a presence. In addressing this crime problem, the FBI relies on a multi-faceted approach for collecting and sharing intelligence – an approach made possible and enhanced through the Southwest Intelligence Group, the El Paso Intelligence Center, OCDETF Fusion Center, and the Intelligence Community. Guided by intelligence, the FBI and its federal law enforcement partners are working diligently, in coordination with the government of Mexico, to counter violent crime and corruption that facilitates the flow of illicit drugs into the United States.

Organized Crime: Ten years ago, the image of organized crime was of hierarchical organizations, or families, that exerted influence over criminal activities in neighborhoods, cities, or states. That image of organized crime has changed dramatically. Today, international criminal enterprises run multi-national, multi-billion-dollar schemes from start to finish. These criminal enterprises are flat, fluid networks and have global reach. While still engaged in many of the "traditional" organized crime activities of loan-sharking, extortion, and murder, new criminal enterprises are targeting stock market fraud and manipulation, cyber-facilitated bank fraud and embezzlement, identify theft, trafficking of women and children, and other illegal activities. This transformation demands a concentrated effort by the FBI and federal, state, local, and international partners to prevent and combat transnational organized crime.

The FBI is expanding its focus to include West African and Southeast Asian organized crime groups. The Bureau continues to share intelligence about criminal groups with our partners, and to combine resources and expertise to gain a full understanding of each group. To further these efforts, the FBI participates in the International Organized Crime Intelligence Operations Center (IOC-2). This center serves as the primary coordinating mechanism for the efforts of nine federal law enforcement agencies in combating non-drug transnational organized crime networks.

Crimes Against Children: The FBI remains vigilant in its efforts to remove predators from our communities and to keep our children safe. Ready response teams are stationed across the country to quickly respond to abductions. Investigators bring to this issue the full array of forensic tools such as DNA, trace evidence, impression evidence, and digital forensics. Through

improved communications, law enforcement also has the ability to quickly share information with partners throughout the world and our outreach programs play an integral role in prevention.

The FBI also has several programs in place to educate both parents and children about the dangers posed by violent predators and to recover missing and endangered children should they be taken. Through our Child Abduction Rapid Deployment teams, Innocence Lost National Initiative, Innocent Images National Initiative, Office of Victim Assistance, and numerous community outreach programs, the FBI and its partners are working to make our world a safer place for our children.

Technology

As criminal and terrorist threats become more diverse and dangerous, the role of technology becomes increasingly important to our efforts. We are using technology to improve the way we collect, analyze, and share information. We have seen significant improvement in capabilities and capacities over the past decade; at the same time it is an area that remains a key concern for the future.

For example, in 2011, we deployed new technology for the FBI's Next Generation Identification System. This technology enables us to process fingerprint transactions much faster and with more accuracy. In addition, throughout the Bureau, we are also integrating isolated stand-alone data sets so that we can search multiple databases more efficiently, and, in turn, pass along relevant information to our partners.

The FBI shares information electronically with partners throughout the Intelligence Community, across the Federal government, as well as with state and local agencies. For example, the FBI works closely with the nationwide suspicious activity reporting (SAR) initiative to implement technical and business processes that enable the eGuardian system and the Information Sharing Environment's Shared Space system to share SARs more quickly and efficiently. These efforts have worked to ensure that SARs entered into Shared Space are simultaneously shared with eGuardian, and in turn, delivered to the appropriate Law Enforcement and Intelligence Community partners.

Sentinel, the FBI's next-generation information and case management system, was deployed to all employees on July 1, 2012. Sentinel moves the FBI from a paper-based case management system to a digital system of record. It enhances the FBI's ability to link cases with similar information through expanded search capabilities and to share new case information and intelligence more quickly among Special Agents and Intelligence Analysts. It also streamlines administrative processes through "electronic workflow." The FBI will continue refining and deploying additional Sentinel features according to employee feedback and organizational requirements.

The rapid pace of advances in mobile and other communication technologies continues to present a significant challenge to conducting court-ordered electronic surveillance of criminals and terrorists. These court-ordered surveillances are often critical in cyber cases where we are

trying to identify those individuals responsible for attacks on networks, denial of services, and attempts to compromise protected information. However, there is a growing and dangerous gap between law enforcement's legal *authority* to conduct electronic surveillance, and its actual *ability* to conduct such surveillance. Because of this gap, law enforcement is increasingly unable to gain timely access to the information it needs to protect public safety and bring these criminals to justice. We are grateful for this Subcommittee's support in funding the National Domestic Communications Assistance Center, which just opened its doors last month. The center will enable law enforcement to share tools, train one another in modern intercept solutions, and reach out to the communications industry with one voice.

It is only by working together – within the law enforcement and intelligence communities, and with our private sector partners – that we will find a long-term solution to this growing problem. We must ensure that the laws by which we operate and which provide protection to individual privacy rights keep pace with new threats and new technology.

Conclusion

Responding to this complex and ever-changing threat environment is not new to the FBI; in fact, it is now the norm. The resources this Subcommittee provides each year are critical for the FBI to be able to address existing and emerging national security and criminal threats.

Chairman Wolf, Ranking Member Fattah, and members of the Subcommittee, I would like to close by thanking you for this opportunity to discuss the FBI's priorities. Mr. Chairman, let me acknowledge the leadership that you and this Subcommittee have provided to the FBI. The transformation the FBI has achieved would not have been possible without your support. Your investments in our workforce, our technology, and our infrastructure make a difference every day at FBI offices in the United States and around the world, and we thank you for that support.

I look forward to any questions you may have.

Mr. WOLF. Thank you, Mr. Director.

SEQUESTRATION

Mr. WOLF. I share your concern, and, frankly, until the Congress and the Obama administration come together to do something bold, like the Simpson-Bowles commission, which puts everything on the table, this will continue, because the domestic discretionaries are being squeezed and the entitlements are rising. So you make a very powerful case against the sequestration.

On Friday we received a reprogramming request from the Attorney General, moving funds, including some FBI funds, to the Bureau of Prisons to maintain safe staffing levels, and we are going to approve that because you have had one prison guard killed, you have had another prison guard commit suicide, I think because of the death. How are you planning to function at reduced funding levels for this current year?

Mr. MUELLER. Well, we are cutting back across the board. We have a hiring freeze. We will have, by the end of this fiscal year, 2,200 open, vacant positions. We have delayed IT upgrades, which are expensive but tremendously important, including putting off acquiring technology that would assist us in detecting cyber attacks. We have reduced or eliminated operational training and travel across the board, all in an effort to make certain that we do everything we can to assure that we minimize any impact of furloughs, understanding that we're looking at not just fiscal year 2013, but fiscal year 2014 as well.

Mr. WOLF. Knowing of your integrity, and you are a man of honesty and integrity, clearly I think the American people should understand the sequestration will hurt.

Mr. MUELLER. It's going to hurt tremendously. And, you know, one of the first things you learn in the military and the Marine Corps is that you take care of your troops, you take care of your troops. I think there is a real feel out there that the troops are not being taken care of. These Agents and personnel were in Iraq and Afghanistan for a substantial period of time. We have been asked to go to Benghazi, Libya, and Tunis—for the attack on the embassy in Tunis, Tunisia, and the Algerian attacks, just to mention a few of the terrorist attacks across the ocean. We have had between 10 and 20 terrorist arrests over the last 18 months and 2 years. The impact of sequestration also affects our ability to do surveillance, whether it be technical surveillance or personal surveillance, as well as develop the tools and the IT capacity that we have been developing for the last decade. Yes, it hurts.

Mr. WOLF. And I was with your people in Afghanistan, and I was with your people in Iraq. We know how difficult it is in Benghazi. And then the Congress makes the decision to freeze Federal pay. The men and women in Afghanistan, who are in Iraq, who went to Benghazi, their pay is being frozen for the third consecutive year, the third consecutive year. Talk about taking care of your personnel.

And did you see the movie "Zero Dark Thirty"?

Mr. MUELLER. No.

Mr. WOLF. The team that tracked down bin Laden, their pay has been frozen for 3 years. And there is a scene in the movie where

seven CIA employees are killed. I went to the memorial service for them out at the Agency. Those who replaced them, their pay has been frozen for 3 years. That's a mistake.

If the Senate bill is enacted in its current form, your total funding levels will be more than half a billion—and let me just say one other thing, too. We stand ready to reprogram. If there is something that comes up that we can reprogram, we will reprogram to give you the ability to move around to make sure that you are taking care of the personnel. If the Senate bill is enacted in its current form, your total funding levels will be more than half a billion below the freeze. At that level, well, you said what do you cut. Do you have the flexibility currently now to move it around based on that?

Mr. MUELLER. I think generally we do, but I would have to get back to you on specifics. The latest reprogramming that was sought by the Department was in order to enhance the flexibility to address concerns elsewhere in the Department. My expectation is we will have the support of the Department as a result of working closely in order to assuage some of the concerns the Department has.

I want to thank this Subcommittee and the House for having a mark that I think more realistically addresses our needs, and although I know the discussions are ongoing, I would certainly encourage Congress as a whole to consider the recommendations of the House.

CYBERSECURITY

Mr. WOLF. Computer intrusions pose an urgent threat to our national security. It's a top priority of yours. I saw that you and Director Brennan and Clapper testified together, I think last week, before the Senate Intelligence Committee?

Mr. MUELLER. It was last week, maybe the week before.

Mr. WOLF. The message was basically that cyber has now taken over or would soon take over the concern with regard to terrorism. What is the number one country that is a threat to the United States Government with regard to cyber?

Mr. MUELLER. Well, there are several countries that have been mentioned for a variety of reasons. China, Russia, and Iran are ones that are often mentioned in this context. Different capabilities, different efforts. It's very difficult, particularly in open session, to describe the different areas in which we find, ourselves engaged with these three countries.

Mr. WOLF. One positive change. I saw where National Security Adviser Donilon gave a speech last week where he acknowledged the primary source of the cyber threat was China.

Let me go to Mr. Fattah.

Mr. FATTAH. Thank you.

MISSING CHILDREN

Director, you are in extended service in your capacity, and I want to continue to recognize that and your service to the country. And let me start with—I think in terms of the countries mentioned, also Nigeria has now become a significant issue related to some of the cyber issues, security issues also. But I first want to talk to you

about the Center for Missing and Exploited Children. Your team there has been doing an extraordinary job working in collaboration with other agencies to help track down and rescue young people who, you know, who are victims of exploitation and kidnapping. And the Center would not be able to function without the close coordination, and your people there obviously need to be commended. I wanted to state that publicly.

You know the Center is in the chairman's district. It is doing a tremendous job. People don't know, but thousands of young people go missing in our country each week, and the work that's being done there.

I also went out and visited the Terrorist Screening Center, and the work there is—again, this collaboration that you have engendered with the other law enforcement intelligence agencies in this transformation of the work of the FBI since 9/11, really to focus in this, I think, as you say, a threat-driven process in terms of terrorism has done a tremendous amount of work. There was a recent capture of a gentleman who is now in New York and there is a trial that is going to proceed there, and, you know, it continues to point out the fact that there are, as you say, that there are continuing threats, and we have to be vigilant.

SEQUESTRATION

The sequester and what you say would be effectively about 2,200 person hours, was it days that would be—furloughs?

Mr. MUELLER. Individuals.

Mr. FATTAH. Okay.

Mr. MUELLER. Vacant. It's not furloughs. It's because we have a hiring freeze. We have done our utmost over the years, when Congress has allocated us slots, to fill those slots.

Mr. FATTAH. Right.

Mr. MUELLER. So I'm not coming up the next year with a thousand unfilled slots asking for additional slots. But because of the hiring freeze, we will have 2,200 vacancies at the end of the year. Now, what this means is we're going to be set back almost 2 years as a result of it. There is going to be a gap, which I saw a number of years ago when there was a hiring freeze, where you don't have the leadership coming along to develop and you are unable to hire up and fill those positions.

Mr. FATTAH. Well, Mr. Chairman, I hope that if we do get a chance to look at any possibilities on reprogramming that this is an area that we can work with the Department on as we go forward. Again, thank you for your service.

And I don't want to prolong this, as we have votes. I know other members want to get in. Thank you.

Mr. WOLF. Sure, thank you.

Mr. Bonner.

Mr. BONNER. Thank you, Mr. Chairman.

Mr. WOLF. There is a vote going on, we're down to 12:38. We'll leave with 5 minutes left.

CYBERSECURITY

Mr. BONNER. Thank you, Mr. Chairman. I have got several questions for the Director, but I'm going to try and focus just on one during this series, and if time permits we will come back.

You mentioned in your testimony, in your written testimony, that you have got more than a thousand specially trained agents working in cyber, in the Cyber Division right now. Our chairman has been one of the real leaders in Congress trying to draw attention to this, and others have as well, and yet sometimes I worry that, kind of like the children's story that the sky is falling, the sky is falling, and we tend to really not take those warnings seriously, one day the sky may fall, and specifically with regard to the cyber threats. Could you give us a more in-depth analysis in terms of whether the FBI has sequestration or not, what you—do you have what you need right now to address this constantly evolving world of cyber threats from a personnel standpoint?

Mr. MUELLER. Let me start by clarifying one thing you said, about there being more than one thousand agents. It is probably somewhat less than that. We have more than a thousand personnel around the United States who are specialists in the cyber arena. That includes Agents and computer scientists. We have just hired perhaps half a hundred, as well as other personnel who are adept in this area.

Do we have enough personnel? No, but I can tell you that since we have changed our recruiting and hiring in the wake of September 11th, hiring persons with cyber skills has been one of the priorities. Consequently, we have built up that capability. As I said, a couple, of years ago, we understood we needed more pure computer scientists to help us out. We have built that capacity. Sequestration will cut that off. We wanted another 60 or 70; we will be unable to fill that. As I think I pointed out, some of the technological tools that would enable us to do better exploitation and investigation on the Internet, we'll have to defer.

By the same token, we are doing much better in terms of our coordination and collaboration with DHS, with NSA, and with the private sector. There is much more to be done. The sequestration will hamper that. Again, under budget constraints such as this, one has to prioritize.

Mr. BONNER. And a quick follow-up to that. Can you give us any recent examples of where your agents or other personnel in the Cyber Division have actually taken down or possibly thwarted a cyber attack that may or may not have been reported in the public domain?

Mr. MUELLER. Well, I can tell you, there have been recent news reports about a number of denial-of-service attacks on banks, and we have been working closely with those banks. We had a case a couple of years ago called Coreflood in which we were able to put a stop to an enterprise utilizing botnets to undertake attacks. We can give you a long list of the investigations that we have done by ourselves and in conjunction with the Secret Service and with NSA, because many of the cyber attacks originate from overseas that have been successful.

The one point I would make is that we tend to think of—and discuss here within the Beltway—protecting our networks from attacks, forgetting that behind every attack and every keyboard is an individual, and that deterrence, like in everything else, is important. Consequently, yes, you have to protect your databases, yes, you have to protect your networks, but those persons who are trying to get in or successfully get in have to go to jail. People have to understand that there is a price to be paid for breaking the law when it comes to cyber intrusions. Again, something that we are focused on is identifying the persons behind those keyboards and making certain that if they have undertaken an attack, they are not going to undertake another one in the future.

Mr. BONNER. Mr. Chairman, out of deference to time, I will yield back.

Mr. WOLF. Okay. Thank you.

Would it make sense to double or increase the penalty for people involved in a cyber attack?

Mr. MUELLER. I'm sorry?

Mr. WOLF. Would it make sense to increase the penalty for anyone involved in a cyber attack?

Mr. MUELLER. I think we ought to look at the penalty structure, yes.

Mr. WOLF. Could you get back to us and let us know?

Mr. MUELLER. Yes, we will get back to you.

[The information follows:]

INCREASED PENALTIES FOR CYBER ATTACKS

The FBI will continue to evaluate the need for increased penalties relating to cyber-based attacks and will convey conclusions to the Department of Justice, the Administration, and Congress.

Mr. WOLF. And we will be glad to talk to Mr. Goodlatte.

Mr. MUELLER. Yes.

Mr. WOLF. Okay. With regard to that, Mr. Graves, do you want to take a shot? We are going to take a few more minutes, because we have 2½ more minutes. We'll leave with 5 minutes left.

Mr. Serrano, excuse me, I apologize, he came in. Do you want to go or do you want to come back?

Mr. SERRANO. Do we have time?

Mr. WOLF. For 2½ minutes.

Mr. SERRANO. Okay, sure.

Thank you for your service.

Mr. MUELLER. Good to see you again, sir.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Mr. SERRANO. In a letter to Senator Mikulski last month before the sequester went into effect, you indicated that sequestration would weaken the National Instant Criminal Background Check System—that they would weaken the National Instant Criminal Background Check System used to screen persons looking to purchase firearms. Now that you have been living with the sequester, have you already had to degrade background checks? If so, do you have any data on what sort of impact this is having on gun purchases, and do you anticipate further weakening of this system as the sequester continues?

Mr. MUELLER. Well, let me discuss briefly, if I could, what has happened since the Sandy Hook Elementary School shooting in December of 2012. The volume has increased by 50 percent since then. The average volume of checks in 2012 was 54,000 a day. The average since Sandy Hook is 81,000 a day, a 50 percent increase in checks. Generally, we have close to 300 individuals who are conducting the examination or examiners who conduct those checks. We have had to add another 200 from the last 3½ months since the attack on Sandy Hook. Out in CJIS we have taken persons from other areas and have mandated overtime in order to accomplish this.

We still are hitting a figure of 97 percent completed within the 3-day period, but we are struggling to keep up with the increase. And quite obviously, the budget concerns and constraints make it that much more difficult. We are trying to maintain that 97 percent completion rate within the 3 days, but we have had to take persons off of other priorities to do it and we will continue to do so until we get some relief.

Mr. WOLF. We are down to 5 minutes. We'll resume when we come back. We'll recess for about 20 minutes.

[Recess.]

Mr. WOLF. This hearing will resume. We're going to go to Mr. Harris, and then if Mr. Serrano comes back, we'll go to him.

Mr. HARRIS. Thank you very much, Mr. Chairman. And thank you, Director, for being here today. I just have a very brief question, and that has to do with to follow up on what Mr. Serrano had asked with the background checks. And I want to commend actually the Department for doing the job that they're doing in keeping up-to-date. I will tell you, very different from the State of Maryland where our 7-day waiting period is now a 6-week waiting period, because I don't think they took the steps that you did basically to say this is actually a priority. As you know, the laws frequently say, as it does in Maryland, that if the background check is not done in 7 days, that gun can be released. So by these delays, you actually—the threat exists that people will be getting weapons that they are not eligible to receive.

And I don't think this is—and I just want to clarify this. This is not the responsibility of the FBI, but the FBI after it does that check, turns over those denials, which I understand are about 75,000 a year, turn them over to the ATF. Is that correct? The FBI really does nothing beyond that?

Mr. MUELLER. That's correct.

Mr. HARRIS. Do you all—in an instance where it's denied, because anyone who's filled it out knows, I mean, the dealer has it in his hand when they call to do the NICS. If it's denied at that point, where does that paperwork end up, which would be the evidence of the—of the crime of—of applying for permission to possess a gun or buy a gun?

Mr. MUELLER. Well, there are records or retention regulations with regard to how long we can retain such records, and I'd have to get back to you on that.

Mr. HARRIS. But specifically, does that hard copy that the dealer's holding in their hands, does it have to be transmitted to the FBI or does it go to ATF when a denial is issued?

Mr. MUELLER. I know it does not go to us. We make a referral to ATF when there's a denial. Now, I'm not sure how we do it——

Mr. HARRIS. Okay.

Mr. MUELLER [continuing]. Whether the paper goes from ourselves in hard copy or is transmitted automatically, I'll have to get back to you on that specific procedure both in terms of how the referral's made and what happens to the hard copy sitting in the hands of the seller.

[The information follows:]

PAPERWORK ON DENIED GUN PURCHASES

When an individual attempts to receive a firearm from a Federal Firearms Licensee (FFL), they are required to complete and sign an ATF Form 4473 (Firearms Transaction Record). If the individual is denied, the FBI retains an electronic record of the denied transaction, and the FFL retains the hard copy of the ATF Form 4473 within their records. On a daily basis, notifications of all denied firearm transactions are electronically sent to the ATF by the FBI. The ATF determines if further action (e.g. investigation) is pursued.

The FBI retains information pertaining to denied firearm transactions. However, in accordance with record retention laws, the FBI must destroy the personal identifying information associated with proceeded transactions within 24 hours.

According to ATF regulations, the FFLs are required to retain the hard copy ATF Form 4473 for a period of 20 years. That form is not transmitted to the FBI.

Mr. HARRIS. Okay. And specifically, because, again, at a different hearing, we heard from the—from the Justice Department that, you know, obviously decisions are made, as you may or may not know, in 2010, out of the 76,000 denials, only 13 were convicted of that. And I'm trying to get—figure out in my mind at what point does somebody—and the—the IG at that point said he believes that in some cases it's a matter of not having evidence, and that's why to me that paperwork is what would actually be the evidence, that somebody checked off a box and signed their name. So if you could get back to me, I'd very much appreciate it.

Mr. MUELLER. I'd be happy to.

Mr. HARRIS. But I want to thank you for how you're responding to the increased demand for doing these background checks, because they do keep guns out of the hands of people who shouldn't have them. And, again, I want to commend you for doing that in times of obviously economic stress of the Department.

Thank you very much, Mr. Chairman.

Mr. MUELLER. The only thing I would add, if I might, is that if legislation is passed to increase the number of background checks we have to do as a result of the legislation, we've spent almost $100,000,000 a year on NICS background checks, and we would probably have to at least double that depending on what legislation comes out of the Congress.

Mr. HARRIS. And Mr. Chairman, if I might just briefly add an additional question to that. My understanding is there's great variation, because part of that background check is a check of mental health records against the mental health database, and that there is great variability between States in that.

Mr. MUELLER. True.

Mr. HARRIS. Is that something—and I know that's true, because I'm from one of the States that hardly ever reports a mental health and the chairman is from one that reports tens and tens of thousands of them.

Is that a problem that you would help resolve or does that come out of a different—the idea that we should get these States and encourage these States to get up to speed on reporting everything, because the denial as only as good as the database that exists.

Mr. MUELLER. We don't really have the leverage to——

Mr. HARRIS. Okay.

Mr. MUELLER [continuing]. Tell States to—to put the money in to fund the notification and insert the information into the databases.

Mr. HARRIS. And is that—is that a flaw in the—is that the flaw in the NICS really, that that data may not be as robust as one might think it is?

Mr. MUELLER. To the extent that we do not have data, yes, it is. There's an opening but I'm not certain I would call it a flaw. I'd say it's certainly a substantial gap.

Mr. HARRIS. Yeah. Thank you very much, Mr. Chairman.

Mr. WOLF. Thank you.

Mr. Honda.

HATE CRIME STATISTICS

Mr. HONDA. Thank you, Mr. Chairman, Ranking Member.

Director Mueller, thank you for being here, and I too will add my commendation for your forthrightness, and I really do appreciate that.

The question I have is on the issue of the FBI's Hate Crime Statistics Act, the data collection, and the need for additional categories. You know, I understand that the advisory policy board will be meeting later on this year to discuss and make recommendations on several new categories.

The categories that I was looking at was the category of hate violence that sometimes is recorded as anti-Muslim but may not be in reality, but both are important, and those categories are the anti-Sikh, anti-Hindu and anti-Arab hate crimes. And I was just wondering what you would be able to say on the record, whether you support adding those to the record, because Attorney General Holder has already come out and generally supported those. I was wondering whether you would be able to go on record on that.

And in addition to that, if that is the case that we could add that, is that requirement actually—could that requirement be actually implemented without a bill, that it can be required as a matter of administrative fiat?

And would you be able to actually implement collecting information on those categories? And I was just wondering what the costs might be associated with it if you were able to do that as an administrative action.

Mr. MUELLER. Well, Congressman, I know the administrative advisory board is looking at those categories, and as you point out, is poised to vote on it. We would be supportive of the vote of the category. I can't get down to the specifics, because as I'm not that knowledgeable of the specifics. I generally understand the process and the goal of the board in reviewing this.

In terms of the costs of implementation, and how it specifically gets implemented, I would have to get back to you. I'm just not familiar with that process.

Mr. HONDA. The advisory board now through the chair is a step. Does it need any other steps to go through before it can be executed, implemented and executed?

Mr. MUELLER. Well, I'll tell you my hesitancy in answering is because you've got something like 18,000 separate law enforcement agencies in the United States.

Mr. HONDA. Yeah.

Mr. MUELLER. And I'm insufficiently knowledgeable of specifically how those categories are added and handled by independent law enforcement entities, what it takes to have those categories added, and the information input in each of those law enforcement jurisdictions. I'd have to get back to you on that.

[The information follows:]

ADDING CATEGORIES TO FBI'S HATE CRIME STATISTICS ACT

As you know, the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) will be considering recommendations to add new categories to the Uniform Crime Reporting (UCR) Programs Hate Crime Statistics at its June 4–9, 2013, meeting. As this topic has worked its way through our APB process, CJIS staff, representatives of local and state law enforcement agencies, and our colleagues at the Office of Management and Budget have discussed options for including additional bias motivations on the form. The recommendations include options for adding Anti-Sikh, Anti-Hindu, and Anti-Arab.

After the June meeting, the APB will determine its final recommendations and forward them to the Director of the FBI. The next step will be for CJIS to begin a series of implementation steps to ensure that the new categories produce reliable statistical information and are implemented in the least burdensome manner. This process includes interactions with several types of law enforcement personnel, including beat cops, administrative clerks and state UCR reporters, to ensure the law enforcement community understands the new categories and how to implement them. We expect to start collecting data using the new categories at the beginning of 2015.

If implemented, the additional reporting requirements would result in additional costs which would be incurred by law enforcement agencies participating in the Hate Crimes Statistics Program (currently about 15,000 of the 18,000 state and local law enforcement agencies participate). Costs could vary from state to state depending on whether the state has a centralized data collection repository of data are submitted directly to the FBI. In addition, costs to implement changes, whether completed internally or externally, would also be contingent upon how the data are submitted via the National Incident-Based Reporting System or the Hate Crime Incident Report.

In addition, the FBI would incur costs to design, develop and implement the technology to support the new reporting requirement. Additional costs would include revising the UCR technical requirements, training materials, and audit processes.

Mr. HONDA. I appreciate that, and I think the committee would also.

In terms of training, we've had this discussion before about FBI staff training, and in some of the training was utilizing stereotypic erroneous information. And we brought that to you, and you were telling us that you would be looking at that and making sure that these things would be eliminated and addressed.

Since then, I have heard a couple more times that certain regions have been doing that again, and I would just wonder if there was an update on that effort to eliminate the erroneous kinds of training that's based on stereotypes.

Mr. MUELLER. Well, as I think you're aware, and I've testified here before, we went through a substantial review of all of our training materials in this area and made substantial changes to it. It is my understanding that those changes have been adopted and

are being enforced throughout the Bureau, and the training meets all of the appropriate standards.

If you have instances that you have heard this is not accurate, I would appreciate knowing it, and we will follow up on it, but I have not heard of any such instances. In fact, I do believe that other entities have emulated what we have done in terms of assuring the validity of our training materials.

Mr. HONDA. It may have been that they've hired some contractors to do the training, and vetting them would probably be a very serious step to assure that they follow the procedures.

Mr. MUELLER. Well, our review of the training program included review of any contractors who would be utilizing our materials or purporting to be issuing training on behalf of the FBI——

Mr. HONDA. Okay.

Mr. MUELLER [continuing]. To assure that all lived up to our standards.

Mr. HONDA. Well, I appreciate that comment and that support. Thank you, Mr. Chairman.

Mr. WOLF. Thank you. I'm going to have a series. I'm going to go back to Mr. Serrano, because he was cut off, and I want to give him an opportunity.

Mr. SERRANO. There are many questions that we could ask, but I don't know if anyone has asked you just this, because I think for newer members it's always good to know.

Do you still have the program where you take new agents to the Holocaust Museum?

Mr. MUELLER. Yes.

Mr. SERRANO. Could you just tell us?

Mr. MUELLER. Sure. Louis Freeh, my predecessor, initiated this as part of the training for any new agent, so that they are exposed to the Holocaust Museum and know and understand what would happen in a renegade law enforcement entity. It is also so they understand that the heart of the Bureau is the integrity, the adherence to the law, and understanding that you have tremendous power to affect the persons, whether it's just in an interview or a charging decision, and that power has to be handled very carefully, and to the extent that it is not handled carefully and is not curtailed, then you would end up with police agencies not unlike what happened prior to World War II.

Mr. SERRANO. Well, and I commend you for continuing that program. You're always kind enough, gentlemanly enough to give your predecessor credit, but you could have stopped it, and you didn't, you continued the program.

And, you know, we have great respect and we support, and this committee always have, the work of the FBI, of the Bureau, but as you and I have discussed in public and in private, you know, there has been times when the Bureau didn't do what it was supposed to do, and many people were hurt. Certainly in my birth place in the Commonwealth of Puerto Rico, there were some things done to some folks that was not proper things to do. And so when you continue this program, you do make a great statement on behalf of what is the proper behavior for the Bureau, and I thank you for that.

Mr. MUELLER. Thank you, sir.

Mr. SERRANO. Thank you, Mr. Chairman.

FOREIGN ESPIONAGE

Mr. WOLF. Sure. I'm very concerned there's a lack of public awareness about the threat of foreign espionage, especially among Federal facilities that handle sensitive and export controlled but not necessarily classified technology. In fact, foreign espionage is a major concern whenever Federal labs and research centers are located.

For example, last week in response to questions raised about the Bo Jiang case, the website for the *Huntsville Times* reported, quote, the cold war may be over, but spying to learn valuable corporate and national secrets didn't end with it. Far from it, says a spokesman for the FBI field office charged with protecting critical national assets and secrets generated by Huntsville's military aerospace centers. Huntsville is a major target, it went on to say, for foreign national spies working to obtain classified information, FBI spokesman Paul Damon said.

Do you believe that Federal labs and research centers like NASA centers and DOE labs are significant targets of foreign espionage, and how significant is that threat?

Mr. MUELLER. Certainly they're targets, yes, and it is a significant threat. And we recognize that it's a significant threat. As I think you probably understand, we have a program called "Agent in the Lab" where we assign agents to 17 of the research facilities and laboratories around the United States. They are embedded in the particular laboratories or research facilities to better know, understand, and address that threat.

We also have a national security higher education advisory board, which has the presidents of a number of universities, who meet periodically to discuss the threats in their universities. In the course of those meetings, we try to educate the leaders of these universities as to the threats that can occur or target their research facilities.

So, yes, it is a substantial threat. I would say it probably has gotten exacerbated in the realm of digital information and cyber attacks. You no longer have to rely on an individual who becomes your asset to gather the secrets in the cyber arena. It's just as easy to have somebody familiar with the cyber world sitting in Shanghai or Beijing or someplace in Russia to attack the networks, to seek databases and then exfiltrate the information. So, if anything, I would say that the threat is more substantial than perhaps it was 10 or 15 years ago.

Mr. WOLF. Do you have anybody in any of the NASA labs?

Mr. MUELLER. I'd have to get back to you on that. I am not sure off the top of my head.

[The information follows:]

AGENT IN THE LAB AT NASA LABS

Although the FBI's Agents in the Lab program does not extend to NASA, there are other programs that the FBI is engaged in with NASA that can be discussed in a classified setting.

Mr. WOLF. Okay. Now, on February 8th and March 7th, I wrote to you asking you to review matters, potentially the illegal transfer

of defense technology to China due to security lapses at the NASA centers. I saw that the FBI and DHS were involved in the apprehension of a criminal individual, Bo Jiang, who is being held, I think, down in Norfolk. Do you have any comments about that case?

Mr. MUELLER. Well, I think it's perhaps indicative of the threat that you mentioned, but because the arrest occurred, over the weekend, and it's now in the court proceeding, it's difficult for me to expand.

Mr. WOLF. But is anyone looking in, like if it was happening at NASA Langley——

Mr. MUELLER. Yes.

Mr. WOLF [continuing]. And I saw your testimony last week with regard to you and Brennan and Clapper with regard to China—could it be happening at Ames or at Goddard or at other places? Is there anyone that's taken a systematic look at it?

Mr. MUELLER. Well, we have a number of investigations ongoing, but in terms of a systematic look, if you are asking a systematic review is being undertaken in particular places, I'd have to get back to you. I am not aware myself of a systematic review that's being done.

Mr. WOLF. If you would get back, because the individual down at NASA Langley was paid for by taxpayer money, and so in essence the Federal taxpayer subsidized him to potentially, and alleged, we will have to see what was on the hard drive, to spy against the United States. And so if it could be happening at NASA Langley—so if you could look at that and get back, I would appreciate it.

Mr. MUELLER. I will do that.

[The information follows:]

SYSTEMATIC LOOK AT LABORATORIES

At this time, the FBI is not conducting a systematic review of NASA research facilities; however, there are several ongoing investigations and programs directed towards addressing threats at NASA. We can provide more information for the Committee in a classified setting.

GANGS

Mr. WOLF. Before I go to Ms. Lowey, I want to ask you two questions on gangs. A recent bulletin produced by the National Gang Intelligence Center, which unfortunately the administration has repeatedly attempted to eliminate, noted that there have been growing numbers of violent Somali street gangs in northeast U.S. as well as violent Sudanese street gangs in the midwest.

For the record, do you believe the National Gang Intelligence Center serves an important role in supporting State and local and Federal Government?

Mr. MUELLER. I do.

Mr. WOLF. Okay. Second, do you believe these gangs have any connection to terrorist groups like al-Shabaab or al Qaeda affiliates in Sudan? And is there a concern that these gangs might contribute to domestic radicalization or sending gang members to join as foreign fighters, as we've seen in the Somali community in recent years?

Mr. MUELLER. Well, I think as you pointed out in your question, there were a number of individuals from the Somali community, particularly in Minneapolis, but also elsewhere in the country, who in, I think it was 2007 or 2008, went to Somalia to join al-Shabaab. One or more of those individuals may have had some association with gangs in the course of living in those communities, but I don't think we have found that is related to the radicalization. It was more happenstance if the person had an affiliation with some form of gang, as opposed to the gang being a fertile field for recruiting for al-Shabaab.

Mr. WOLF. And who are the Sudanese students, because most of the Sudanese that I know come over here to escape the Bashir administration. Just who are they?

Mr. MUELLER. I'm not familiar with them. I'm much more familiar with the Somali community than I am with the Sudanese community here, and that's the first I have heard about Sudanese gang members perhaps being recruited for work overseas in Somalia or Sudan.

Mr. WOLF. Well, can someone look at it——

Mr. MUELLER. Yes.

[The information follows:]

SUDANESE STUDENTS

The emergence of ethnic Sudanese gangs is a growing threat in several U.S. jurisdictions.

Although primarily operating in the Midwest (including Omaha and Lincoln, Nebraska, and Des Moines, Iowa), Sudanese gangs are criminally active in other U.S. regions, to include Anchorage, Detroit, Las Vegas, Minneapolis, Nashville, Seattle, and San Diego. The FBI has no intelligence information at this time that suggests that there is a nexus between Sudanese gangs and terrorism.

Mr. WOLF [continuing]. And just let us—let us know. And then the last question on gangs, we have heard a number of worsening gang trends that are worrying: expanding membership, migration of regional gangs to new locations across the U.S., unification of prison and street gangs, alliances with drug trafficking cartels, rampant cell phone use in prisons that allows gang leaders to continue to control gang activities from prison, increasing use of female facilitators, the expansion of gangs into white collar crimes, wire fraud, Social Security fraud, and prostitution and trafficking of persons. Does that all ring true with you?

Mr. MUELLER. Yes, and has for a number of years.

Mr. WOLF. Is it growing or decreasing?

Mr. MUELLER. I would say it's about the same level. I think it's grown over the last few years. I spent a fair amount of time in California, Pelican Bay. A number of gang members ended up in Pelican Bay in northern California and were able to run their gangs from inside the walls. So it is a phenomenon that we have seen around the United States for a substantial period of time, and it probably has grown most recently.

Mr. WOLF. Okay. Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman.

Director Mueller, welcome. Thank you for coming before the subcommittee today, and I thank you for your service to the country and for your professionalism in running the FBI.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

As you know, the FBI operates the National Instant Criminal Background Check System, or NICS. A common response from those who oppose additional gun violence prevention measures is, and I quote, "We have to enforce the laws that we have," end quote. But even a momentary glance at the laws that we have proves that there are holes in our system that even with adequate enforcement will not be able to keep guns out of the hands of those who seek to do us harm. Specifically I'm focused on the fact that those on the terror watch list do not raise a flag in the NICS system. I don't understand that. Why are those on the terror watch list not automatically denied a firearm from a federally licensed firearms dealer? And should a person's listing on the terror watch list be a factor in the rare denial of the purchase of a firearm?

Mr. MUELLER. Well, the reason that those on the terrorist watch list are not barred from firearms is statutory. It is not one of those prohibitive factors listed in the statute.

And, again, I believe there's legislation that at least is being discussed in terms of what more could be done to expand either prohibitive factors or to expand, in other ways, the use of NICS to bar the sale of guns.

Mrs. LOWEY. That's extraordinary to me. So a person can be on the terror watch list, and yet we have to pass legislation to ensure that a person on that list can't purchase a gun?

Mr. MUELLER. That's my understanding.

Mrs. LOWEY. Amazing. Okay.

The President has indicated that he plans to devote additional resources in this fiscal year and in fiscal your 2014 to help States provide more information to the Federal databases used in NICS background checks.

How long do you think it will take, how much funding will it take to make the NICS databases complete enough to have confidence that prohibited individuals are not able to purchase guns from licensed dealers? And have you seen a greater effort by States to supply pertinent information to the NICS-related databases since Sandy Hook?

Mr. MUELLER. I'd have to check on the last part of the question, whether we have seen an uptick in terms of information from States. Generally we do after something like Sandy Hook. It differs from State to State, and I don't have a comprehensive view as to how much it would cost in each State, the willingness of each State, or the ability of the Federal Government to provide the funds to a particular State enabling them to provide more information to NICS. I'd have to get back to you on that.

[The information follows:]

NICS INFORMATION PROVIDED BY STATES

The tragedy at Sandy Hook Elementary School occurred on December 14, 2012. The level of state record submissions to the NICS Index continues to increase since the Sandy Hook tragedy. The following chart provides the level of increase/decrease of state submissions to the NICS Index (per month when compared to the prior month) before and after the Sandy Hook tragedy.

Month/Year	Volume	Percentage of Increase/Decrease
October 2012	2,765,573	
November 2012	2,764,615	−0.03%
December 2012	2,797,448	+1.19%
January 2013	3,496,108	+24.97%
February 2013	3,721,684	+6.45%
March 2013 (as of 3/26/2013)	3,802,416	+2.17%

Mrs. LOWEY. I thank you. And I'm also concerned that the sequester could impact the ability of the FBI to resolve outstanding background checks, and that if the 3-day clock ticks down, those who should be restricted from having access to firearms will be able to make the purchase.

So what happens when a prohibited purchaser is able to complete a firearm purchase because it takes longer than 3 days to resolve the eligibility question? Is the firearm retrieved from that individual, and then how long does that take? What do you do about that?

Mr. MUELLER. Well, as I've indicated before, we've had a substantial increase in a request for checks since Sandy Hook. Whereas generally throughout 2012, we would have approximately 300 examiners addressing this, we have had to put another 200 examiners on in the last 3½ months because of the increase. Nonetheless, we have still been able to assure that 97 percent of the requests are resolved within a 3-day period.

To the extent that it does not get resolved, and in the end if it gets resolved against that person having a weapon, then it's referred to ATF and ATF does go out and attempts to retrieve that weapon.

CYBERSECURITY

Mrs. LOWEY. I'd like to continue this discussion with you at another time, but lastly, I have just one other issue, because it came up at another hearing I attended. It was last week, I think, that the Department of Justice Inspector General testified before the subcommittee, spoke of the importance of encouraging private businesses to invest in their own network security and to promptly report incidents of cyber intrusions to the FBI.

Are you working closely with the private sector? Are they good partners with regard to sharing information that could help the FBI learn more about cyber threats and vulnerabilities? And if you could probably—catch us up to date on what are the challenges, is it working, what else can be done?

Mr. MUELLER. Well, what we found in the wake of September 11th in the counterterrorism realm is that for us to be successful we have to work cooperatively with State and local law enforcement, so we established joint terrorism task forces throughout the country.

When it comes to the cyber arena, the absolute key partner there is the private sector. We've made headway with the private sector, but there are hurdles to working together that we have to overcome. One is liability for sharing information. Perhaps some would argue that there are issues with regard to the antitrust laws if the private sector gets together and shares information, then shares it

with us. There are issues relating to the loss of their proprietary information if they share it with the Federal Government.

We are working through those, and I know there's legislation pending to, in part, address this, but we have to, if we are to be successful in this realm, develop mechanisms of channeling information between the private sector and the Federal enclave in order to anticipate and prevent cyber attacks and then identify those responsible for those attacks, making certain that they go to jail or otherwise are deterred from additional attacks.

Mrs. LOWEY. Well, thank you. And thank you, Mr. Chairman. It seems there's a real question as to what can be done now and what can be done if there's legislation, and if you don't have that information in the legislation, are you really preventing good partnerships with the private sector, but we will save that for another day. And I thank you very much.

GANGS IN THE MILITARY

Mr. WOLF. Let me ask you one question as I close out the gangs. I have heard there's a growing concern about gangs in the U.S. military. Does DOD participate in your National Gang Intelligence Center and do they have access to your data as a tool for them to flag or detect potential gang recruitment in the military?

Mr. MUELLER. I'd have to check their commitment or personnel assigned—if any, to the National Gang Intelligence Center.

I do know, however, that we work very cooperatively with the military to address gangs that may be on the street and yet also in the military, particularly on bases where there is some indication that the gang activity is not relegated to just the community, but also involves those assigned to nearby military bases. We have enhanced our cooperation in that regard.

Mr. WOLF. Should I write Secretary Hagel and ask him? Would it make sense for DOD to participate with one person over there?

Mr. MUELLER. I'm not saying that they don't. I'd have to get back to you and figure out what the relationship—whether they have personnel, and even if they do not have personnel, what we have to assure that there is the exchange of information and intelligence.

DOD PARTICIPATION IN NGIC

The Department of Defense is a partner at the National Gang Intelligence Center. There are agents and analysts from Army CID as well as SOUTHCOM.

Mr. WOLF. Okay. Mr. Schiff.

DNA

Mr. SCHIFF. Thank you, Mr. Chairman. Director Mueller, it's nice to see you. Thank you for the superb job you've been doing at the FBI for a long time now. Greatly appreciative.

We've spoken in the past about using DNA technology to solve serious crimes. And there was a period around 2007, 2008 when the crime lab had an enormous backlog of offender DNA samples. It was a lot of work, but by investing technology and with the support of this committee, the FBI has cleared that backlog.

Similarly, the OIG report from 2010 found that there was a substantial FBI DNA casework backlog, but an unpublished—update published in September found that that backlog is now very low and well managed.

In both cases, I want to commend you and your staff for their hard work in bringing that up to date. I have no doubt that by improving turnaround times through DNA evidence, that we're solving serious crimes and preventing additional people from being victimized.

There are many State and local crime labs around the country that have not been as successful as the FBI, and I hope that you and the FBI lab can prioritize sharing the lessons you've learned about clearing your backlogs with the States and local governments.

I wanted to touch on familial search, which we've talked about before. For those who haven't heard about it, this is a method of searching offender DNA databases to determine if DNA from a crime scene has a close familial relationship with someone in the offender database. Probably the best known case involved an L.A. serial killer, the Grim Sleeper, who murdered at least 12 women over the course of several decades. He was caught because a familial search linked evidence from crime scenes to his son, who had been incarcerated in California for robbery.

I introduced legislation last year and I intend to do so again asking the FBI to implement familial searching capabilities across the national database. Right now it's on a state-by-state basis. We were lucky in the Grim Sleeper case. If the killer's son had been arrested in Nevada, we would not have gotten a hit, that case would be still open and potentially open forever, and there may have been subsequent victims.

We had a good hearing in the Judiciary Committee on the bill last year, and I hope we can get the bill to the floor this Congress.

When I raised to topic with you last year, you voiced support for the technology and said that your staff was exploring how to implement such a system technically, including building a software that you would use to estimate the likelihood of a familial relationship. And I wanted to ask you if you have any updates on the progress towards familial search and the findings of the working group that have been studying it? Do you still believe that congressional authorization is necessary or at least preferable to start allowing familial searches of NDIS?

Mr. MUELLER. Well, let me start by saying there isn't a prosecutor or law enforcement entity that would not be supportive of a mechanism such as this to identify persons, particularly those persons that are responsible for such horrendous crimes.

There are three things I should mention. First is your legislation, which we did support and will continue to support. I think there were modifications last year, but we certainly would support it. I do believe, without doing any research, that it would take some statutory assistance to push it through, because it is a somewhat controversial development or new technology. Those who are concerned about privacy rights and the like have substantial concerns.

As I think you know, the scientific working group on DNA analysis, a working group of specialists from around the country, has

been meeting and has recommendations. We expect those recommendations to come out this summer, perhaps in July. We will look at those and try to follow up on those.

And lastly, as you point out, we are looking at designing an algorithm that we can use at the Federal level to conduct such searches and do it appropriately according to standards that are set up either by regulation or by statute, but, yes, we are tremendously supportive of this and we will try to keep you apprised of each of the steps.

Mr. SCHIFF. Do you have any sense of when that technological work, when the software will be developed? I mean, we've done it in California. There are a couple of other States that have it. It's not that difficult, although there may be different policies in terms of how expansive or limited it should be. But any sense of a timeline on that?

Mr. MUELLER. I'll have to get back to you on that. I don't have one. I will tell you, it looks like it's coming to a head this summer with the recommendations from the board, so my hope is that we'd be able to take some action later this year.

Mr. SCHIFF. All right. Thank you. Also on the subject of DNA, I understand that the FBI has invested in testing and validating rapid DNA technology. Rapid DNA is an emerging technology that puts a crime lab in the hands of the law enforcement officer at the scene. Rather than waiting days or weeks or months to develop a DNA profile of an arrestee, a police officer with simple training can take a DNA sample themselves and have a profile within 90 minutes.

Rapid DNA was discussed at length by the Supreme Court recently during the oral arguments in the case of Maryland v. King concerning the constitutionality of collecting DNA profiles upon arrest. The justices noted that with rapid DNA on the horizon, the time when DNA will serve even more directly as a method of identifying an arrestee is rapidly approaching.

This is a technology I think many people are not aware of yet, but I know that under your leadership, the FBI lab in Quantico has been participating in discussions and testing. I think this would be a very powerful new tool and really feel that the DNA—DNA is the 21st century fingerprint, and—but I also understand that the DNA Identification Act would currently preclude uploading a DNA sample obtained using a rapid DNA device into the national DNA index system.

Do you expect the Department will be asking for an amendment to that law to accommodate this new technology?

Mr. MUELLER. I'm uncertain about the impact of that legislation and what the Justice Department is doing with regard to that legislation. As you point out, we are testing two prototypes and we will be adding another prototype, I think this summer, with the expectation that rapid DNA will eventually perhaps be at booking stations when you go in, the same way you take fingerprints. I'd have to get back to you on the question of the impact of that legislation.

[The information follows:]

RAPID DNA LEGISLATION

The FBI would consider the need for legislation relating to Rapid DNA technology in conjunction with the Department of Justice and the Administration.

Mr. SCHIFF. Because I think, as I understand it, currently you need a independent verification by an outside lab, and that's not something that can be done in the 90 minutes in which you do a rapid DNA test. So I would think when the technology is ripe, we'll probably have to work together on that, and I would look forward to working with you.

Mr. MUELLER. I understand the Catch-22 that you're referring to.

IP THEFT

Mr. SCHIFF. One last question, Mr. Director. In your testimony, you discussed the ongoing theft of intellectual property and trade secrets of U.S. companies that occur in the economic espionage context. A much more public theft of work of U.S.-based creators occurs every day through rampant piracy and counterfeiting. As you know, this subcommittee has supported dedicating agents and Assistant U.S. Attorneys to investigating and prosecuting these cases, and I hope you maintain that commitment. And I hope you'll continue to make IP and piracy a priority. They have a real cost in the form of U.S. jobs and economic activity.

We got a good reminder of that a few weeks ago in a study released by two economists, Michael Smith at Carnegie and Brett Daneher at Wellesley. The report looked at the period following the seizure of MegaUpload in January 2012 and the indictment of its founder and several of his employees on charges of criminal copyright infringement and racketeering.

The researchers studied movie sales in 12 countries before and after the MegaUpload indictment and arrests. At one time it had been the 13th most popular site on the Internet, went offline. They found that sales of movies through legitimate sources increased by 6 to 10 percent following the closure. As Daneher and Smith write, even though shutting down MegaUpload didn't stop all piracy, it was successful in making piracy sufficiently less reliable, less easy to use, and less convenient than it was before, and some consumers were willing to switch from piracy to legal channels as a result.

The investigation and indictment are the direct work of agents and AUSAs dedicated to intellectual property crimes that the subcommittee has helped to stand up, and I want to comment you for their success. I would ask you to continue to prioritize this work with the IPR Center at ICE and collaborate on these large, complex international investigations. They have a real payoff, and I see that very directly among my many constituents who work in this area. So I just want to urge you to continue to make this a priority.

Mr. MUELLER. We will, but let me suggest something to you. We have in the cyber arena a private industry that is reluctant, upon occasion, to cooperate with the Federal Government, for a variety of reasons, not the least of which, they'll lose their proprietary information, they'll be publicized and the like. On the one hand, we're asking when it comes to intrusion, and theft of intellectual property, and secrets and the like, that private industry support us. There has been some reluctance over a period of time.

On the other hand, when it comes to intellectual property and the movies and the like, they're very anxious to provide us information and to ask us to pursue these criminals.

My question is, why are they not together? Intellectual property is intellectual property. It can be a movie, it can be a song, it can be a military secret; it can be something that is stolen from a university or a research laboratory, as is being pointed out.

It would seem to me that what we want to do is enlist the support of private industry to work with us to address cyber attacks. On the one hand we talk about intellectual property cases and on the other hand talk about cyber cases. I'd suggest to you they're not too different and that we ought to be looking at them as one grouping and we should have the support of private industry in those efforts.

Mr. SCHIFF. And, Director, I would agree. I mean, we're getting our house stolen right out from under us, some of it in very open forum in terms of IP theft that you can see on the Internet, some invisibly through cyber infiltration, spear phishing and other cyber attacks, and we ought to be cooperating between the public and private sector in both those arenas. They're both equally devastating.

And—you know, and I think we're close. As you point out, I think the private sector has some concerns about their liability. At the same time, as you point out, the private sector does provide information to the government when it comes to the theft of their products overtly, so why not provide the same cooperation when their intellectual property is being stolen covertly.

I think we're pretty close. I serve on the intel committee, as you know, and there are some remaining issues about whose responsibility it is to remove personally identifiable information. I don't think that's an onerous burden, and I think most of the large players, particularly in the telecommunications area, they're doing this already, they are sophisticated, they have the ability to do it, and—but I think you're right. We need to look at this in a holistic way and attack the problem, both the public and private face of it.

Thank you, Mr. Chairman.

Mr. MUELLER. So if you could persuade your constituents——

Mr. SCHIFF. I—they're certainly——

Mr. MUELLER [continuing]. That are concerned about intellectual property to be concerned about the——

Mr. SCHIFF. It's not always the same——

Mr. MUELLER. Intrusions.

Mr. SCHIFF [continuing]. The same industries. I mean, there is overlap, but it's not always the same players who are the victims of as much cyber theft as are the victims of the quite overt——

Mr. MUELLER. Yeah.

Mr. SCHIFF [continuing]. IP theft. Thanks, Mr. Chairman.

Mr. WOLF. Okay. I think there's going to be a vote. I think I'm going to stay. I'm going to miss the vote. Let the record show if there is a vote, that I would have voted aye, but just to—I don't want to have you hang around and then—but the other members should feel free to go. And they said there may be a vote coming soon.

PROVISION OF 9/11 COMMISSION RECOMMENDATIONS

The fiscal year 2013 bill, which we hope will be enacted soon, includes funding for you to procure a comprehensive external review of the implementation of the recommendations related to the FBI that were posed in the report issued by the 9/11 Commission. This review would also include an analysis of the FBI's response to other emerging terrorism trends, including the influence of domestic radicalization. The language in the bill requires the submission of a report no later than one year after the enactment.

I wondered if you have any comments on it. I think it's a very positive thing. It was a good amendment. In it we say in the bill, the FBI is encouraged in carrying out this review to draw on the experience of 9/11 commissioners and staff. I didn't put the language specifically to say, but I would hope that when this passes—I think it will—that you bring back former Congressman Lee Hamilton and former Governor Kean to sort of do it. I don't think we need another 9/11 commission, but I think those two individuals would be good. Do you have any comments about it?

Mr. MUELLER. I would have to take a look at it. Certainly those two individuals have shepherded all of the elements that were responsive to September 11th, and I think they certainly have the experience, but I'd have to take a look and see what is meant, what kind of review, how extensive, where the staff comes from, and the like. I certainly would consider it.

Mr. WOLF. Sure. Well, it's not meant to be in any criticism of the Bureau. It's iron sharpens iron. And I think as you look at that, and I know you—you agree, but as I said, this act includes $500,000 for a comprehensive external review of the implementation of the recommendation related to the FBI that were proposed in the report issued by the National Commission on Terrorist Attacks, and it goes on. And it ends by saying, the FBI is encouraged in carrying out this review to draw upon the experience of the 9/11 commissioners and staff. And I think both of them did a pretty exceptional job and both are very good people.

CAIR

I want to commend you for your policy, which has been in place since 2009, that prohibits noninvestigative cooperation with the Council on American Islamic Relations, CAIR, after the group was identified as the unindicted coconspirator in the Holy Land Foundation case.

As you know, last year I asked the Inspector General to investigate a number of instances when field offices were not complying with this policy. I'm told this report will be released this spring. Could you confirm for the record your policy prohibiting noninvestigative cooperation with CAIR remains in place?

Mr. MUELLER. It does.

Mr. WOLF. Okay. We have discussed before my concern with any FBI association with the Council on American Islamic Relations, CAIR. I understand for the last few years the FBI has suspended any formal engagement with CAIR. The fiscal year 2013 Appropriation Act again indicates support for that policy and directs the FBI to notify the committee should there be any violation of the policy.

We have not received any notifications, so we just assume there's been no violation of the policy, but your field offices do know that that is the policy of——

Mr. MUELLER. Yes.

SYRIA

Mr. WOLF. Okay. I just saw an article today in the *New York Times,* "Syrian Rebels". I was in Lebanon. I met with legal attache. And in Egypt 2 weeks ago, we were interviewing people who were pouring across the Syrian border, and they were telling us of their concern about some of the radical elements in the Free Syrian opposition. And my sense is the administration has failed. They should have been involved very early. Had they been involved early in certain activity, we may have prevented what was potentially—and we talked to Christian, Sunni and Alawite, and they all were fearful of what could take place. In the *New York Times,* and we'll submit this for the record, it announces that Syria's main exile opposition coalition elected a naturalized Syrian-born American citizen early Tuesday to be the first Prime Minister of the interim Syrian Government charged with funneling aid to rebels inside Syria and offering an alternative to the government of President Bashar al-Assad, who has been a bad person. We want to see him go.

[The information follows:]

The New York Times

March 18, 2013

Syrian Rebels Pick U.S. Citizen to Lead Interim Government

By **ANNE BARNARD**

BEIRUT, Lebanon — Syria's main exile opposition coalition elected a naturalized Syrian-born American citizen early Tuesday to be the first prime minister of an interim Syrian government, charged with funneling aid to rebels inside Syria and offering an alternative to the government of President Bashar al-Assad.

By choosing Ghassan Hitto, 50, an information technology executive who lived in Texas until recently, the Syrian opposition coalition concluded months of contentious efforts to unite behind a leader, under pressure from the United States and its allies, which demanded that the opposition set up clear chains of command as a condition of increasing aid to the rebels.

Mr. Hitto, a relative unknown in opposition politics who rose to prominence recently through efforts to improve the delivery of humanitarian aid, was far from a unanimous choice. After a day of maneuvering and voting on Monday that lasted into early Tuesday, he won 35 votes, just three more than Assad Mustafa, a former agricultural minister under Mr. Assad's father and predecessor, Hafez al-Assad.

Mr. Hitto faces formidable challenges in his quest to to establish administrative authority over areas of northern Syria that have been secured by the rebels.

Mr. Assad's air force still rules the skies, so any attempt to govern from those rebel-held areas risks the constant threat of airstrikes. And antigovernment fighters and activists inside Syria, who have long complained that the coalition offered little concrete help and had little connection to the struggle on the ground, remain skeptical of any interim government based outside the country.

Even opposition leaders outside Syria are divided on whether an interim government makes sense. Fahed al-Masri, a spokesman for the rebel Free Syrian Army's unified command, questioned how a government could function when it controlled little territory or money yet would be held responsible for the fate of more than one million Syrian refugees and several times that number displaced inside the country.

"Welcome, government," Mr. Masri said sardonically.

Mr. Hitto — who ruled out negotiations with Mr. Assad, another blow to wavering efforts to find a political solution — has argued that forming a government would help keep Syria from slipping further into chaos.

"There is always a possibility that this regime might fall suddenly," he said, in a video posted on YouTube to announce his candidacy. "And we can't avoid a political vacuum in the country and the ensuing chaos unless there is a transitional government."

He called for "a government of institutions and law" that would be accountable and transparent.

The stakes are high. Many nations have recognized the coalition as the legitimate representative of the Syrian people, meaning that if Mr. Hitto is able to form a cabinet, which is far from certain given the group's fractiousness, his government could try to claim Syria's frozen state assets and other levers of power.

With his many years in Texas, Mr. Hitto may seem like an unusual selection to lead a government struggling to establish street credibility with rebels — or an uprising facing allegations from Mr. Assad's supporters that it is an American creation.

But he said he could not resist getting involved, especially after his son Obaida, 25, sneaked off to Syria and joined rebel fighters to shoot videos, deliver humanitarian aid and spread word of their struggle.

Mr. Hitto and his wife, Suzanne, an American schoolteacher, have four children, all born in the United States, where Mr. Hitto advocated for Muslim Americans after 9/11 as a representative of the Council on American-Islamic Relations.

He traveled to the Middle East last fall to learn more and never went back. "I have a career back home that I'm in the process of destroying," he said jovially over lunch recently in Istanbul.

In his role heading the humanitarian aid arm of the coalition under Suhair Atassi, a coalition vice president and respected activist from Damascus, Mr. Hitto quickly came into close contact with American and other foreign officials. Frustrated with what he saw as anemic and disorganized international efforts to aid displaced Syrians, he hired internationally known aid consultants to do a survey that found that the number of needy people in six Syrian provinces was more than 50 percent higher than United Nations estimates.

He described himself as a zealous but diplomatic advocate trying to push international donors to give the coalition a bigger role in the delivery of aid. "As an American," he said, he wanted the United States to do more to support the rebels.

Born in Damascus, Mr. Hitto left Syria in the early 1980s and received an M.B.A. at Indiana Wesleyan University. He is of Kurdish descent, which the council may have seen as a plus since it has been criticized for not reaching out more to Syria's minorities.

Some council members said Mr. Hitto was the choice of Syria's Muslim Brotherhood, a group that has long been banned and persecuted under the Assad family's government and that plays a powerful role in the coalition. That could give him credibility among some in the Sunni Muslim-dominated uprising, but it also concerns some opposition members who feel the Brotherhood already wields disproportionate sway. Brotherhood leaders say they seek a civil, not an Islamic, state, but some in the opposition worry that it will impose a religious agenda.

One activist from Mr. Assad's minority Alawite sect said the Brotherhood was "trying to stab the revolution once more."

Another, Yamen Hseen, said that an interim government running northern Syria smacked of dividing the country.

"A government formed abroad, consisting of people we don't know, nor the mechanism by which they were picked, it just makes me worry," he said. "I think it is a result of other countries' demands and not the demands and needs of the people and the revolution."

The announcement that Mr. Hitto had won came hours after Syrian planes fired at a sparsely populated area near the town of Arsal in eastern Lebanon, the first time the military used its air force to strike at suspected rebel hide-outs in Lebanon. The Wadi al-Khayl Valley area is known for its porous border. It is considered a haven for Syrian insurgents, and the civilian population there largely opposes Mr. Assad.

The Syrian government warned on Thursday that it might fire into Lebanon because of incursions by rebel fighters.

Reporting was contributed by Hania Mourtada and Hwaida Saad from Beirut, Rick Gladstone from New York, and Hala Droubi from Dubai, United Arab Emirates.

Mr. WOLF. By choosing Mr. Hitto, 50, an information technology executive who lives in Texas, it goes on, but it said he is of Kurdish descent with—and with the Council may have seen a plus since he's been criticized for not reaching more out to Syria.

Then it says, some Council members say Mr. Hitto was the choice of Syria's Muslim Brotherhood, a group that had been banned and persecuted under the Asaad government, and that plays a powerful role.

And then it goes on to say, Mr. Hitto advocated for Muslim Americans after 9/11 as a representative of the Council on American Islamic Relations.

That was slightly concerning, particularly since I had all these different families of all different denominations and faiths all tell me the concern of if—what takes place if some of the people are currently in Syria.

FBI HEADQUARTERS

New headquarters. The need for new FBI headquarters has been in the news lately. I understand that GSA has received 35 proposals from developers in communities in the metro area interested in hosting a new headquarters building.

Can you bring the committee up to date first with the circumstances that led you to pursue a new headquarters facility, then on the status of the effort, including an estimated time frame for a decision and the timing of an actual movement?

Mr. MUELLER. Well, the reason for the new headquarters is because we have very much outgrown our headquarters on Pennsylvania Avenue. As most people would say, it's not the most architecturally positive building.

Mr. WOLF. It's actually ugly, to be honest with you.

Mr. MUELLER. Yes. But even if it were ugly and still could be used, we would use it, but we have outgrown it. We've got something like 20 various entities that are spread around, and our work is inhibited by not being in one place, so that has driven us to seek a new headquarters.

We need it to be in the capital region, near transportation, both Metro and elsewhere, and also to assure that it meets our security concerns.

GSA is in the course of its process, as you know, and pointed out there are, from reading the newspapers, 35 proposals submitted. I am not certain of the timetable that GSA will follow. I'll have to get back to you on that. I don't now how long it takes for them to go through their proposals, and I'd have to get back to you in terms of the process that they follow now to winnow down and select a site.

[The information follows:]

NEW HEADQUARTERS—GSA PROCESS, TIMETABLE

As Dr. Dorothy Robyn, the Director of Public Works of GSA, stated at the March 13, 2013 House Transportation and Infrastructure Committee hearing, the evaluation of proposals will take several months to review.

Mr. WOLF. I've been very concerned that the Senate language, without saying it, targets it to go to a certain location. And I believe, and I would hope that you would make it clear to the GSA

people that it ought to be open, honest and there ought to be nothing but integrity—and there's probably nobody in the government that I trust more than—more than you? There ought to be integrity in the process and not have a political operation by using language in different bills to sort of direct it in a certain way without naming the place, yet in essence the circumstances set it to send it to a certain place. So hopefully as you talk to the GSA, you will make sure that you, because of the credibility of the FBI, want it to be open, honest and it be done in an appropriate way.

Mr. MUELLER. Absolutely.

Mr. WOLF. In addition to your headquarters project, and I'm familiar with some additional construction projects which can be funded from your own FBI appropriations budget, which have been pending for some time due to lack of funding or authority, specifically the central records complex and the needs of Quantico.

Can you describe the need for these projects to the committee and give us an estimate for the associated funding requirements and the status?

Mr. MUELLER. Under the budget constraints, to the extent that we need funds, for instance, in the swap that we're doing, which you hopefully will approve, we're going to have to look at monies from Quantico that we were going to use for renovations at Quantico and just put them off.

In terms of the record center, that has been something we've wanted to accomplish for a number of years, to organize our records in one place. Records are so important to the work that we do. I'll have to get back to you on where we are specifically in terms of the funding for that. But, again, in this budget crisis, these are the things that are going to be affected.

Mr. WOLF. Well, could the other two be part of the package?

Mr. MUELLER. I'll have to get back to you on that.

Mr. WOLF. Because my understanding from reading the news is that whoever is successful on the bid, they'll have an opportunity to procure the spot on downtown Washington in your current headquarters, and I just wondered if you couldn't do all three together. The needs of Quantico and the record-keeping, I mean, they're—and now you're going to have to do them even more with the closing down of the Washington.

Mr. MUELLER. Well, I'll have to take a look at that. Again, I see your point.

[The information follows:]

COMBINING NEW HEADQUARTERS, QUANTICO AND CRC INTO ONE PROPOSAL

The FBI defers to the General Services Administration on these three projects (a new FBI Headquarters building. Quantico renovations, and a new Central Records Complex) could be included in their request for proposals.

BENGHAZI

Mr. WOLF. Yeah. I have been concerned about the lack of progress in identifying and apprehending and bringing to justice those responsible for the attack on the U.S. facilities in Benghazi last September. We're now beyond the 6-month date.

Your people experienced problems at gaining access to the site initially and also problems in gaining access to interview subjects.

You personally went to Libya in January. We saw last week that an individual is being held in Libya in connection with the attack and that the FBI was able to interview him in the presence of Libyan authorities.

Are you satisfied with the pace and the result of the investigation so far and the cooperation you're getting from other governments?

Mr. MUELLER. Well, there were hurdles at the outset, which you're familiar. Benghazi did not have a law enforcement element to provide, on the one hand, security and on the other hand, the ability to act as our partners or to assist in developing witnesses. We have overcome many of those hurdles with the help of the Libyan authorities, who have exhibited a willingness to support us in our investigation, and it is progressing.

I did go in January and met with the Prime Minister, who assured his support, and I met with him when he was here in the United States, I think it was last week. And the question is not necessarily the willingness, but the capability, and we are working on that.

As I said, the investigation is progressing and we have interviewed a number of the witnesses in a variety of places that have assisted us in putting together a picture of what happened.

Mr. WOLF. When I was in Egypt 2 weeks ago, I gave them a letter specifically asking President Morsi to allow the FBI to interview the person who they have in custody. Has the FBI been given access to the individual, Gamal, in——

Mr. MUELLER. No.

Mr. WOLF [continuing]. In Egypt?

Mr. MUELLER. Not yet.

Mr. WOLF. Well, you know, the committee—we give Egypt—I think Secretary Kerry when he was out there announced the $250,000,000, and if the FBI—and let me just commend to your people going out there, your people were in Tunisia waiting for 5 weeks, if my memory serves me correctly. They were on the ground waiting the initial time they went out.

Mr. MUELLER. Well, they were in Tripoli for a good long time waiting to go in.

Mr. WOLF. But in Tunisia, too, weren't they?

Mr. MUELLER. Well, in Tunisia because of the attack on the embassy——

Mr. WOLF. Right.

Mr. MUELLER [continuing]. In Tunisia on, I think it was September 14th, 3 days later.

Mr. WOLF. And we give Tunisia $320 million a year for Federal aid. And I would hope that I would have the support of the committee when we mark up in full committee. I just think it's unacceptable. We lost four individuals who gave their life serving our country. We have some who have been wounded. The very thought that our government will give that foreign aid to the Morsi government and not have the FBI being given the access to that individual is unacceptable.

And so if you could keep the committee, both Mr. Fattah and me, informed on the progress of the Morsi government giving you access, I would appreciate it. Anne Patterson told me she was going

to specifically raise it, and she told me Secretary Kerry was going to raise it. I don't know if he did. But if a week or two or more go by, if you would let me know, I would appreciate it.

Mr. MUELLER. We'll do that.

[The information follows:]

PROGRESS OF MORSI GOVERNMENT PROVIDING ACCESS TO INDIVIDUAL IN CUSTODY

The FBI will keep the Chair and Ranking Members of the Subcommittee informed of progress made in gaining access to the individual in custody.

NATIONAL SECURITY LETTERS

Mr. WOLF. On Friday a Federal judge in California declared the FBI's use of national security letters unconstitutional. I assume that the Department will pursue an appeal. Do you have any comment on the FBI's use of national security letters, the constitutional questions, and your use of them as a tool to protect national security?

Mr. MUELLER. They're absolutely a critical tool in terms of establishing the predicate for more invasive or extensive investigation, and without that tool and the ability to get that information quickly, we would be working with one hand tied behind our backs.

I would assume, not having talked to the Department of Justice, that they probably will appeal that decision by the judge in San Francisco. I know she has stayed her ruling so that an appeal can be taken. The Second Circuit addressed the same issue and found that the actions and the way we were operating under that particular statute obviated the constitutional issue. So it has been addressed elsewhere, and my hope and expectation is that it is addressed either on appeal or by new legislation. It is an essential tool.

Mr. WOLF. I was going to ask you how essential. What would be the circumstances if her ruling were upheld and it became the law of the land, what would that mean to the FBI?

Mr. MUELLER. Well, without any fix from Congress and the like, it would dry up many investigations. I can't give you the percentage, but a substantial number of our counterterrorism investigations, and counterintelligence, espionage investigations, which rely on national security letters for not the substance of conversations, but the fact of a conversation having taken place between two individuals, would dry up our ability to get that information and would severely, severely hamper our ability to undertake those counterterrorism or espionage investigations.

Also in the cyber arena, where you have countries—you've mentioned China and the like. If we are unable to utilize national security letters, it would adversely impact our ability to undertake investigations in that arena as well.

Mr. WOLF. The fellow who was picked up a while back, Abu Ghaith, the alleged Al Qaeda spokesman who I think is bin Laden's son-in-law——

Mr. MUELLER. Yes.

Mr. WOLF [continuing]. Was arraigned recently in Federal courts in New York for conspiracy to kill U.S. nationals. Why is this an

appropriate approach as opposed to the military commission system that Congress created for trying enemy combatants?

Mr. MUELLER. Much of this would be difficult to get into in open session. I can say that there was some intelligence that he might be traveling. We were not certain at the outset to which country. The best vehicle for having a country detain a person is filing charges and having an Interpol Red Notice. That puts the country on notice that this particular person for which a Red Notice has been issued may be traveling and then is the basis for the detention of that particular person. In this particular case, the individual was detained under that protocol. I do not believe that we would have had the ability to detain this person without utilizing that process and then following through.

Mr. WOLF. Okay. There is—and this is not a question, but just a comment—there is something inconsistent. I think the administration has used the Bureau on the Benghazi, and every time there has been a question asked they usually say, this is an open investigation and we can't comment, the FBI is working on it. The very thought that the administration killed Awlaki, who was an American citizen—and I supported what they did—with a drone missile—keep in mind he was an American citizen—yet the people who killed Ambassador Stevens and three others and wounded others is being apprehended by using the FBI. You really can't go in downtown Benghazi and knock on a door and say, hi, I am with the FBI, and get a warrant. So it just seems like there is two different approaches being taken, and one, the drone, was used on Awlaki, who radicalized many people, put out the publication, and I understand that, and yet on the effort—the effort with regard to Benghazi is being treated as a law enforcement issue.

Mr. MUELLER. Well, let me——

Mr. WOLF. If you want to comment, I would love to have you comment.

Mr. MUELLER. I'm not certain one should say that we are utilizing one approach to the exclusion of the other. Every one of these situations are a little bit different, and there are occasions where it goes one route, which is a military detention route. There are others that go in the judicial route. From our perspective, if we are conducting an investigation, since September 11th, that investigation is developed and initiated. We develop intelligence first and then determine the options afterwards. But the expectation is that we want to gain all the intelligence we can to prevent the next terrorist attack.

You have to have an end game on the individual whom you have detained, and there are a variety of options there. I would say that each of these options are on the table whenever we address a situation like this, and we choose the best route that will maximize our ability to get intelligence but also assure that the person whom we have detained faces some charges, and is not going to walk out of a jail cell anytime soon.

DOMESTIC RADICALIZATION

Mr. WOLF. Okay. I have just two more, and then I'll go to Mr. Fattah, see if he has any at the end, and then end. Last year we discussed domestic radicalization and the uptick in the number of

attacks or attempted attacks by people radicalized in this country. What are the latest trends, and what successes and challenges are you having in countering this threat?

Mr. MUELLER. Well, I think you are right in saying that it is an enhanced trend. I think we have been somewhat successful in stopping the larger attacks initiated from outside. I would never say it is not going to happen. I always knock on wood, but what we have seen recently is phenomenon of persons radicalized on the Internet. Perhaps with some friends who also are radicalized on the Internet, generally what we call the lone wolves, who are engage in some form of activity. We have had a number of undercover cases where persons have been investigated, prosecuted, gone to trial, and been successfully prosecuted in this arena. These would be the lone wolves who aspired to undertake attacks. We have been relatively successful in utilizing the same investigative tools we utilize for narcotics cases, public corruption cases, and white collar criminal cases in terms of obtaining the cooperation of people, in terms of utilizing surveillance, whether it be wire or physical surveillance, using forensics, and identifying initially the persons who present these threats, and then to thwart any potential for an attack.

The more that the trend increases to focus on lone individuals, the harder it becomes for us to identify those individuals because they're not reaching out to anybody else which would enable us to identify and be alerted of them. It is an increasing trend, and we have been relatively successful. My hope is that our traditional techniques will continue to give us some success in this arena.

Mr. WOLF. Shifting just a little bit from that, does the recent legalization of marijuana in Colorado and Washington State and the trend that we're seeing, how does that—how will that impact on the FBI and indirectly the DEA? But you are involved in these cases, too. What——

Mr. MUELLER. We do very little, as you are aware, because if you look at our appropriations, we are still participating in OCDETF task forces and the like, and I'm really not certain what, if any, impact it would have on the work that we do or the work that DEA does at this juncture.

SENTINEL

Mr. WOLF. Okay. The last question I have is, you've had a long struggle to develop and implement the FBI's case management system, Sentinel. Could you bring the committee up to date on the deployment of Sentinel, what has been deployed, what are the benefits, and what, if any, challenges remain?

Mr. MUELLER. We launched Sentinel last July, and it thankfully has been successful. I think we did a study that will show that in order to do our investigative report, we have cut in half the time it would take to do an investigative report, commonly called a 302. We are still integrating other databases so that you don't have to cut and paste information from one to the other. But it was, I believe, very well received, by those in the field. We continue every 3—no, I think every 4 months to have an upgrade that provides new versatility and utility to people in the field. So I do believe that ultimately, finally, that program was successful, and it was

done, as I think you know, at or about the cost that was established for it a number of years ago.

Mr. WOLF. Mr. Fattah.

Mr. FATTAH. Well, first of all, let me——

Mr. MUELLER. I'm sorry, can I just add one thing, if I might that I thought of? Sentinel and developing Sentinel further and giving the Agents the tools is part of the IT that is tremendously important that we maintain. And, again, the budget constraints where we have to rein in what we're doing can adversely affect our ability to continue the development of Sentinel and give the Agents, Analysts, and the workforce the tools they need in this digital world to stay ahead of those who seek to do us harm. Sorry. But I did want to get that in.

Mr. FATTAH. Let me start here. You've had a distinguished career. I want to ask a couple questions, but I do want to mention that. I do note in your bio you also served in the Marines. I want to take the occasion to offer our prayers to the families of the seven Marines who died today in the explosion at the explosive test center in Nevada, and the seven others who were injured, and I know that the chairman shares that.

Mr. WOLF. I do.

TERRORISM THREATS

Mr. FATTAH. And since this is our last public engagement for the day, I want to make sure I say that on the record.

But let me move to this point. These Article III courts have had, since your entire term in office, handled hundreds of terrorism cases.

Mr. MUELLER. Correct.

Mr. FATTAH. It wouldn't be just the gentleman who has been brought to New York most recently. And this has been over a number of presidential administrations. So these courts have been able to properly adjudicate these matters and to do that within the constraints of our judicial system. And that doesn't take away from any other procedures that might be available. But as you explained, when we're operating in terms of international law and the way that this particular individual came to be able to be detained was through Interpol. And so I really want to commend the administration for its aggressiveness in getting this person and making sure that we can hold him and anyone else accountable for the attacks on 9/11 and other attacks that may have been planned by Al Qaeda.

So the Congress, you know, has a number of issues that from time to time come into play, but I think all of us should agree that the work that you have done and that the FBI has done since 9/11, really protecting the country against any, you know, massive domestic terrorist attack, and all of your activities internationally, has really been remarkable because the agency really wasn't—it wasn't its primary focus on 9/11, but as with much of the country, we have had to focus more intently on this issue. So I want to thank you.

I do want to bring you back home, though, to my final question, which is about the budget and appropriations and the Department of Justice. We imprison more people than any other nation in the

world through our State and Federal prison system. And the BOP, in particular, which is under our committee's jurisdiction, it's not under your jurisdiction, but it's under our jurisdiction for appropriations, they are now rising to be about 24 percent of the DOJ budget. You are at about 29 percent. And the BOP is just going to continue to rise. And at some point we have to think differently about what we're doing with people.

You know, and I have constituents, I have family, I have children, we all want to be protected from dangerous people and the society ought to be protected, and people who are involved in wrongdoing should be punished.

At some point as a country, and that's why I mentioned the longevity of your career, you were a prosecutor, you have been running the FBI, you have had a view of this from a lot of different perspectives, the committee is going to be, as we go forward, wrestling with these issues over the next decade, you know, because the more people we lock up, the more we put in prison, the greater share of this budget is going to be taken up through BOP. And at the same time, these agencies like yours that are trying to protect our country from terrorism as your number one responsibility are going to be shrinking relative to its portion of the budget.

And the chairman has been the biggest supporter of the FBI that I think the Congress has ever seen in terms of fighting for dollars, and I've seen him in the private rooms when there's just four of us, you know, our Senate counterparts, and he is always fighting on behalf of the agency. But the question becomes as a country, as a society, do you have any thoughts about, going forward, how we make a clear delineation about who we might want to put in an expensive prison cell and spend tens of thousands of dollars a year to keep them locked up and the others who we might have to think about some different approach in terms of seeking redress or punishment for their transgressions? It is a more philosophical question, but I would appreciate your comment.

Mr. MUELLER. Actually it's a cosmic question. I can only speak for the FBI and the necessity for—and, again, I thank the Subcommittee for the support you've given to the FBI, because the FBI has to change over a period of time. There are a number of ways of resolving a particular case. One may be imprisonment, one may be deportation, another could be house arrest. There are a number of particular dispositions.

My concern is that, as we go through the next 2 or 3 years, that the American public, Congress, and the Administration understand that the FBI is unique, has to change with the threats, and be nimble, and that requires a focus on priorities. We have a lot of jurisdictional capability, but we have to prioritize and make certain that we prioritize the largest threats to the community, whether it be a mortgage fraud, fraud on Wall Street, public corruption or civil rights abuses, and make certain that we are focused on the greatest threats to the American public. And then to the extent that there is a determination as to what the ultimate resolution of an investigation or a case is, that really is in the hands of the prosecutors, the Department of Justice, and the judges.

Mr. FATTAH. Thank you.

JUSTICE REINVESTMENT

Mr. WOLF. Well, thank you. I appreciate Mr. Fattah's question. What Mr. Fattah and I are going to do is we are going to introduce the bill after—and I'm going to ask you your comments on it—after the recess. It will be bipartisan, it will be the two of us, to set up a national commission made up of—we haven't sat down to decide—made up of mainly prison experts, particularly in the States, many of them very conservative States, some liberal, who have had to respond to the prison crowding more from an economic issue than any other. And so it'll be bipartisan. We're looking for a chairman of stature, somebody who can come and take a year to come back and report.

Because I think our prison system is dysfunctional in the sense that very, very few people are working, the Prison Industries Program has been decimated, partially because of the Congress. We've tried to get the Bureau of Prisons to adopt programs to allow them to make products that are no longer made in the United States. There's only two baseball cap manufacturers now left in the United States, and every baseball team, every college, every—the FBI has hats. I hope they're made in America, I hope they're bought from the American company.

But so what do you think about having a national commission, not right-left—I'm a conservative Republican, I think he's a liberal Democrat. He can talk for himself how——

Mr. FATTAH. I am. I resemble that remark.

Mr. WOLF. Yeah. But to really look at this thing. And I'll tell you, we'd have to talk to Mr. Fattah, but a great person to name it after would be almost Chuck Colson. Chuck was kind of a mentor. He went to prison, became a believer, spent his Christmases in prison, Easters in prison, right up until his death he was visiting the prisoners. And I have seen him with prisoners, and they really loved him because he cared. Most people get out of prison and, you know, they run away.

But what is your thought about putting together the Fattah-Wolf bipartisan commission about looking at this to really see what do we do, particularly because in the reprogramming a large portion of the money that we approved in that reprogramming, $118 million, came from the FBI to give to the Bureau of Prisons. So what are your thoughts about looking at what do we do, are we doing it the best way, should there be rehabilitation, should there be drug treatment, what do we do?

Mr. MUELLER. This is the first I have heard of it, so I haven't given much thought to it. I would say that I think an independent look would not at all hurt, and by independent I mean independent, objective, and to look at certain aspects of incarceration. I guess there are two big challenges, who and what. Who would do it, and then the what would be a specification so that it's not a wide-ranging enterprise or initiative without the possibility of coming back with some recommendations that can and should be adopted. So starting smaller, with a very specific, defined set of goals and parameters and an independent look, I don't think could hurt.

Mr. WOLF. With that, that's my last question. Again, this is probably the last time you'll testify before this committee. I was called off the floor the other day and a guy said, I understand that Director Mueller is going to serve for 2 more years, what's your position? He said it will take a bill. I said, well, if they do, I'll speak for the bill. But I think you ought to talk to Mrs. Mueller first before you present it.

Mr. MUELLER. Exactly.

Mr. WOLF. So thank Mrs. Mueller and thank you and thank the men and women of the Bureau. The hearing is adjourned.

Mr. MUELLER. Thank you.

QUESTIONS FOR THE RECORD—MR. WOLF

NATIONAL GANG INTELLIGENCE CENTER

Question. At the hearing, the Director testified the National Gang Intelligence Center serves an important role in supporting State and local and federal government. However, your budget proposes to terminate it, with the rationale that you would focus on sharing intelligence at the field level. Under that proposal, how would the FBI replace existing support for State and local agencies that the Center provides, and how would it carry out national-level analysis and intelligence sharing, fusion and dissemination?

Answer. The FBI is able to adjust its remaining resources to ensure continued intelligence sharing on gang-related matters.

Question. I understand that the Department of Defense is a partner at the National Gang Intelligence Center, with agents and analysts from the U.S. Army CID as well as from the U.S. Southern Command. How would eliminating the Center affect your cooperative anti-gang efforts with the Department of Defense?

Answer. The FBI will continue to maintain anti-gang efforts with the Department of Defense on an ad hoc basis as determined by our investigations and share subject matter expertise with branches of the U.S. military. Gang members have been reported in every branch of the military and the intelligence provided by NGIC has assisted the military in identifying gang threats within their ranks. Again, the FBI will continue to maintain anti-gang efforts with the Department of Defense and branches of the military.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Question. Your budget proposes an increase of $100 million and 524 positions for enhancing the capacity of the NICS system based in part on the anticipated increase in workload were a universal background check requirement to be established. How much of the expected increase (in terms of funding and staffing) is tied to that assumption?

Answer. All of the requested increase for the FBI for NICS is tied to expanded background checks which would result from passage of legislation requiring universal background checks.

Question. Your budget calls for adding an additional call center, consistent with anticipated workload growth and the fact that most checks are processed by phone. You also indicated that currently funded upgrades for NICS won't be deployed until FY14. Is any of the $58 million requested for non-personnel

funding to be used to augment those upgrades, or reduce the dependency on telephone checks.

Answer. The requested funding would not be used to augment upgrades or reduce the dependency on telephone checks. However, the FBI has actively encouraged the use of the NICS E-Check through liaison efforts, handouts, and recorded messages and has been able to reduce the time a NICS Legal Instrument Examiner spends relaying information to the Federal Firearms Licensees (FFL). The $58 million requested in non-personnel funding is predicated upon a significant expansion background checks that would be ensue should universal background check legislation be enacted.

With regard to E-Checks, FBI is in discussions with large corporate FFLs (e.g., Cabelas, Wal-Mart, Sportsman's Warehouse, and Bass Pro Shop) that are planning transitions to the NICS E-Check system. These transitions should reduce the overall call volumes experienced at the NICS Call Center. At the same time, though, one state has ceased serving as a Point of Contact (POC) state conducting its own firearms background checks, and several other states are considering following suit. When a state stops serving as a POC state, the FFLs in that state contact the NICS Call Center directly to initiate firearms background checks, which can result in an increase in Call Center volume. Also, several states have enacted or are in the process of enacting their own legislation at the state level to require background checks at gun shows and for other private transactions. If these things were to happen, increases to the current workload, both at the NICS Call Center and for the FBI, may occur.

QUESTIONS FOR THE RECORD—MR. ADERHOLT

FOREIGN INTELLIGENCE

Question. In your testimony, you mention that our corporations and universities are now being targeted for technologies and trade secrets. As you know, our universities in Alabama have been on the cutting edge of these technologies—from cyber technology to health care breakthroughs to bomb dog development. How are you working with these civilian entities and others across the country to help them protect their critical information from these foreign threats?

Answer. The FBI, through its Counterintelligence Strategic Partnership Program (CISPP), implements a multilayered, multifaceted approach in mitigating the risks posed for foreign actors in acquiring sensitive technologies, advanced scientific research, and trade secrets from private industry and academia.

Since the 2003–2004 time period, the FBI has required each of its 56 field offices to "know your area of responsibility" or, understand the classified and sensitive technology in the domain that may be targeted by foreign powers. This extended beyond military or US Government facilities and covered centers of innovation like American companies, universities, and research hospitals. At the national level, the CISPP manages the Business Alliance and Academic Alliance programs, both of which protect US interests targeted by foreign intelligence services (FIS) by developing partnerships with private industry and academia, using outreach at FBI headquarters and local field offices. These programs result in the bi-directional sharing of actionable and relevant information related to the protection of classified information, trade secrets, and advanced research. Each of the 56 FBI field offices has a Strategic Partnership Coordinator (SPC) assigned to manage these programs at a local level. During FY 2012, SPCs conducted 7,136 briefings, meetings, and presentations promoting counterintelligence (CI) awareness of economic espionage, protection of trade secrets, espionage, insider threats, and acquisition of sensitive technologies by foreign actors. Along with these briefings, 3,892 Counterintelligence Vulnerability Assessments were provided to assist cleared contractors, private businesses, and academia in conducting a self-assessment of their CI programs. As a direct result, 184 organizations either created a CI program or strengthened their current CI security policies and practices. Additionally, due to the personal relationships built through these interactions, 297 investigations and 154 threat assessments were initiated based on information shared with SPCs.

The CISPP also manages the National Security Business Alliance Council and the National Security Higher Education and Advisory Board outreach programs. These efforts provide the FBI a sounding board to identify emerging threats, disseminate classified threat information, and understand the needs and concerns of private industry and academia, which enables the FBI to effectively and actively engage other private industry, college, and university leadership throughout the country to raise national security awareness. In addition to the above, there are a number of local and regional programs promoting CI awareness, like the Research & Development Defense Alliance of the Research Triangle (RED DART) program initiated in the FBI Charlotte field office, in partnership with the Naval Criminal Investigative Service and Defense Security Services. This program focuses on small to mediumsized Cleared Defense Contractors (CDCs), advanced research centers, and private industry possessing valuable trade secrets and intellectual property targeted by FIS, that do not have a comprehensive security program dedicated to keeping those secrets safe. The program's great success has resulted in implementing other chapters of RED DART around the United States.

In addition, the FBI has a dedicated unit for protecting America's trade

secrets: unique, unclassified proprietary information, which is valuable to American centers of innovation such as companies, universities, and hospitals. The Economic Espionage Unit covers theft of trade secret cases with a foreign nexus. This unit, working with other counterespionage units, leverages every national security or criminal tool available to understand the threat and thwart or mitigate loss: the Foreign Intelligence Surveillance Act, traditional Title III coverage, federal grand jury subpoenas and national security letters, and traditional criminal search warrants. The unit can also leverage the assets of the US Intelligence Community (USIC) to determine whether the hand of a foreign government is behind the theft of trade secrets in a given case. The FBI and USIC understand that American innovation, not just classified information, is actively targeted by foreign powers. As an educational tool, the CISPP and the FBI Economic Espionage Unit are currently developing a training video targeted as a logical follow-up to the FBI's two other successful videos, "Betrayed" and "Game of Pawns." This new video is based on a recent economic espionage investigation and shows the methods and tactics used by foreign governments to obtain trade secrets through any means necessary, including cyber intrusion, joint ventures, criminal trespassing, and the recruitment of insiders using the Internet and social media as a way to spot and assess vulnerable employees.

Finally, the Economic Espionage Unit has extensive experience with cases in university settings. The unit currently has four of such cases open today. As noted above, the FBI, at a local level and nationally at headquarters, is committed to safeguarding innovation in university settings. The FBI will pursue outreach to academia with vigor, and investigate any incursions or theft of university-developed innovation with thorough investigations, while respecting unique privacy sensitivities inherent in the university setting.

CYBER

Question. Your testimony states that since 2002, the FBI has seen an 84 percent increase in the number of computer intrusions investigations opened. I am surprised that number isn't higher. Is another Federal agency handling more of these cases?

Answer. The FBI has worked with the Department of Defense and the Department of Homeland Security to ensure the statutory authorities of each Department correspond to their roles and responsibilities. As such, the United States Secret Service also investigates criminal computer intrusion matters.

Question. In the Rove Digital case, both Estonian and Russian hackers were involved with the infection of more than 4 million computers in more than 100

countries. However, your testimony only addresses the cooperation received from the Estonian government. Has the Russian government blocked the FBI's efforts in this investigation?

Answer. The Russian government has not blocked FBI efforts. An INTERPOL Red Notice was created and the FBI's Legal Attach (Legat) in Moscow was notified of this notice. A Red Notice is used to circulate a fugitive's identification information to all or some INTERPOL member countries. There has been cooperation thus far, but additional attempts, working with the Legat, will be conducted to gain greater cooperation.

Question. You mention that Estonia has recently passed new legislation to allow for better cooperation in these types of cases. Are other governments following suit? Are there specific countries that deliberately create roadblocks to international cooperation in these types of cases?

Answer. The Budapest Convention reinforced a process of legislative reform worldwide. According to the Council of Europe, legislative reforms prompted by the Budapest Convention have been carried out or are underway in at least 120 states. The Budapest Convention has served as a guideline to most of these countries. Police-to-police and judicial cooperation increased considerably between many of the parties to the Budapest Convention. Ratification of this treaty by the United States of America took place in 2006. All parties now have functioning 24/7 points of contact in line with Article 35. There are a total of 30 other countries that have ratified the treaty drafted at the Budapest Convention. An additional 16 other countries are signatories to the treaty, but have not ratified yet. The FBI is unaware of any countries that have intentionally created roadblocks to cooperation on cyber cases.

TEDAC

Question. I am pleased to read that the new TEDAC facility at Redstone Arsenal in Huntsville, AL is expected to open in February 2014. Does the Bureau have the resources necessary to keep this effort on-track and on-time? Will this be affected by the sequester?

Answer. The TEDAC facility is scheduled to open in the fall of 2014 with operations starting in the Spring of 2015. The construction effort is on-track and building and maintenance, personnel, and transfer costs will be available once operations begin at the Redstone Arsenal facility. The FBI is continuing to work with the Joint Improvised Explosive Device Defeat Organization (JIEDDO) to determine the amount of funding they will provide. Over the past few years, JIEDDO has provided resources to sustain TEDAC's efforts as well as address the latent backlog, resulting from a large volume of

devices coming in from war theatres. TEDAC has been pursuing a shared contribution approach from its partners to secure a permanent funding base for its operations.

Question. Of the 95,000 submissions TEDAC has investigations since its opening in 2003, can you provide us with a general breakdown of these submitted by the various partners? (i.e., are most of the submissions coming in from the military? international partners? etc...) Do these partner agencies help support the Center, either financially or through in-kind support?

Answer. As of April 25, 2013, TEDAC has received over 97,000 submissions from 28 countries. TEDAC's submissions have come primarily from Iraq and Afghanistan through the military, although more recently, we have seen surges from multiple partners originating in Somalia and other countries in Africa and Asia. Further, submissions also come through the collection efforts of the law enforcement entities, such as the FBI and ATF. These partner agencies contributing submissions support TEDAC either financially or through in-kind support.

CRIMES AGAINST CHILDREN

Question. Are the ready response teams that the FBI has stationed across the country to respond to abductions working with local LEOs or are they stand-alone teams?

Answer. The FBI's Child Abduction Rapid Deployment (CARD) Teams provide state and local law enforcement with on-the-ground investigative, technical, and resource assistance during the most critical time period following a child abduction. Nationwide, the CARD Teams consist of 60 field agents selected based on their in-depth experience in child abduction cases. Teams are geographically distributed throughout the five regions of the U.S., consistent with the FBI Corporate Management Structure, in order to expedite deployment and to facilitate cooperation between federal and local law enforcement. In addition to their unique expertise, the CARD Teams are capable of quickly establishing an on-site command post to centralize investigative efforts and operations. Other assets they bring to the table include a mapping tool to identify and locate registered sex offenders in the area, national and international lead coverage, and the Child Abduction Response Plan to guide investigative efforts. The top priority for the teams is the safe recovery of the child and they provide their services regardless of whether any prosecution is in state or federal court.

Due to the time sensitive nature of child abductions, the FBI provides proactive training for state and local enforcement regarding the capabilities

of the CARD Teams. This training facilitates federal and local law enforcement cooperation from the onset of the investigation. Recently, the Texas Department of Public Safety, Texas Ranger Division, requested state-wide training for their personnel to raise awareness of the resources provided by the CARD Teams. This training and the deployment of CARD Teams are provided without cost to state and local law enforcement.

Since 2006, the CARD Teams have assisted state and local law enforcement in the investigation of 89 cases involving 98 critically missing or abducted children. Of these 98 child victims, 38 were recovered alive while 19 remain missing. Furthermore, the deployment of the CARD Team resource has contributed to an 80 percent subject arrest rate.

Question. You specifically reference the FBI's increased communications allowing the Bureau to quickly share information with partners around the world in cases of child abductions. Have the cases of international child abductions from the U.S. been increasing over recent years, or does it stay relatively stable?

Answer. The Department of State (DOS) Office of Children Issues reports a decrease in international parental kidnappings over the past three calendar years. The DOS Office of Children Issues reported an 8 percent decrease in the number of cases initiated between 2010 and 2011, and a 15 percent decrease in the number of cases initiated between 2011 and 2012. A review of FBI investigations also revealed a slight decrease in the number of cases initiated for the same period.

Question. What role does the FBI play in cases of child trafficking, both in cases where the U.S. is a source country and a destination. How does the Bureau cooperate with other federal partners in these crimes?

Answer. The FBI's Innocence Lost National Initiative (ILNI) addresses the growing problem of children recruited and forced into commercial sexual exploitation through prostitution. This FBI initiative is supported by the Department of Justice Child Exploitation and Obscenity Section (DOJ/CEOS) and the National Center for Missing and Exploited Children (NCMEC). The ILNI has resulted in the identification and recovery of 2,638 children suspected of being victims of commercial sexual exploitation [OVER WHAT TIME PERIOD?]. Pimps convicted as a result of ILNI investigations have received substantial terms of imprisonment, including nine life sentences and several sentences ranging in length from 25–50 years.

Since the inception of the ILNI, the FBI has partnered with 331 state, local and federal agencies to form 66 Child Exploitation Task Forces (CETF) throughout the U.S. The CETFs focus their resources on criminal enterprises

engaged in the transportation of juveniles for the purpose of commercial sexual exploitation using intelligence driven investigations and employing sophisticated investigative techniques. Federal agency partners include the U.S. Postal Inspection Service, U.S. Secret Service, Department of Homeland Security, and U.S. Marshals Service.

Between June 2008 and June 2012, the FBI coordinated six national enforcement operations, Operation Cross Country I-VI, to combat domestic child sex trafficking. FBI field offices, and their law enforcement partners, participated in each operation over a three to five day period by targeting venues such as street tracks, Internet, truck stops, motels, and the casinos where children are prostituted. Through these six intensive enforcement operations, over 8,500 law enforcement officers from over 414 state, local, and federal law enforcement agencies, joined together to rescue child victims and apprehend those who victimize them. As a result of these operations, 328 child victims were safely recovered and 430 pimps engaged in the commercial sexual exploitation of children were arrested.

Since 2003, the FBI has partnered with NCMEC to host the Protecting Victims of Child Prostitution (PVCP) training course. To date, 1,350 law enforcement officers and prosecutors have received this training on the comprehensive identification, intervention, and investigation of the commercial sexual exploitation of children.

The FBI has been working with the Department of Education and school resource officers in an effort to establish regional awareness and training for school administrators in areas identified as "high risk" for recruitment of children into commercial sexual activity. In July 2012, the FBI presented on this topic at a national training event for school resource officers in Reno, Nevada.

To combat the sexual exploitation of children overseas, the FBI, in conjunction with host country authorities and non-governmental organizations (NGOs), has employed a proactive approach, including threat assessments, training and investigation, to identify and disrupt the activities of sexual predators. Since 2008, the FBI has partnered with law enforcement and NGOs throughout Southeast Asia and Latin America to arrest and convict offenders who engage in child sex tourism.

NASA—SECURITY VIOLATIONS AT AMES AND LANGLEY

Question. The NASA IG's office did not express concern about security violations as early as might be expected, given the dangers posed by the possible loss of technical information to foreign governments potentially hostile to interests of the United States. What legislative language would take away

discretion in future cases and cause an automatic investigation into similar allegations?

Answer. The FBI defers to NASA on whether any legislation concerning NASA IG investigations would be appropriate.

Question. What actions can the FBI take independent of the NASA IG?

Answer. The FBI has full investigatory powers for matters regarding Counterintelligence (CI) threats under Executive Order 12333. The FBI also has authority in export-control matters under its general criminal investigative authorities and can investigate allegations of the loss of secret, controlled, or otherwise-sensitive NASA information. Once there are facts suggesting a subject has engaged in the illegal proliferation or theft of export-controlled or dual-use technology, or is otherwise a threat to national security, the FBI has a wide range of potential investigative options.

Question. Has the FBI received full cooperation from NASA regarding the foreign nationals who seem to have had unauthorized access to information?

Answer. NASA is fully cooperative in our investigations in these general matters.

FRIDAY, APRIL 12, 2013.

DRUG ENFORCEMENT ADMINISTRATION

WITNESS

HON. MICHELE M. LEONHART, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

OPENING STATEMENT—MR. WOLF

Mr. WOLF. The hearing will come to order. Administrator Leonhart, thank you for appearing before the committee today to testify on the fiscal year 2014 Drug Enforcement Administration budget request. Before we begin to address that, however, I want to express my appreciation to you and to all the DEA employees for your dedication and service to our country. The level of commitment of your agents and officers is remarkable and has borne fruit in recent years with significant achievements in bringing down traffickers such as Viktor Bout. I want to thank you and thank the others in the DEA. I also want to acknowledge Chairman Ed Royce, who was the voice of the Congress that continued to push to put pressure on the political people in the administration to make sure. But I think the DEA has to be given special credit and your agents.

In addition, over the years your agents, officers, and task force partners made the ultimate sacrifice and died in the line of duty, such as the three special agents lost in 2009 helicopter crash in Afghanistan, and there are those who sustained serious and life-changing injuries, such as special agent Joe Piersante, who was shot by the Taliban during a 2011 operation in Afghanistan and has not recovered his eyesight.

We are grateful and appreciative of the sacrifice and the courage. And I think it's important, because these really don't get very much coverage, that the American people know, and particularly that the Congress knows. So before we get into the budget issues I just wanted to thank you. And if you take the word back to your employees I appreciate it.

In your fiscal year 2014 budget you're requesting $2.07 billion in new discretionary budget authority, a net increase of $56 million or 2.8 percent above the fiscal year 2013 enacted levels before sequestration. Although this appears as an increase, it reflects no personnel growth and no construction funding. Fiscal year 2014 increases are base adjustments that reflect transfer of National Drug Intelligence Center functions to DEA and cost adjustments for pay and foreign operations.

In addition, the request includes $12 million in IT and administrative savings and would eliminate long-vacant positions from the DEA's books. We will have questions regarding trends in drug trafficking, prescription drug abuse and enforcement, and how DEA is

addressing increased drug trafficking from the source and transit signs. We would also expect to hear how DEA will preserve enforcement efforts despite tightening of budgetary resources. In addition, we would like to hear how changes in U.S. presence in Afghanistan may affect your operations and the international effort to quell trafficking of heroin.

Before we recognize you to testify, I'd like recognize my colleague Mr. Fattah for any comments he might make.

OPENING STATMENT—MR. FATTAH

Mr. FATTAH. Thank you, Mr. Chairman.

And let me welcome you again. You've had a long and distinguished service career. And we look forward to your testimony. We'll put more formal remarks in the record, but since we don't know exactly when votes may occur on the floor we won't prolong this part of the process, we'd rather hear from you.

Mr. WOLF. Thank you, Mr. Fattah.

Mr. WOLF. And in order to sort of keep this thing rolling since we're here, there will be times that I will go to down and vote and Mr. Fattah will chair and vice versa, we'll just try to keep the thing moving. There may a brief break, but hopefully not very long.

Pursuant to the authority granted in Section 191 of Title 2 of the United States Code and Clause 2(m)(2) of House Rule XI, today's witness will be sworn in before testifying.

[Witness sworn.]

Mr. WOLF. Let the record reflect that the witness answered in the affirmative. And we thank you, Administrator. The committee looks forward to hearing from you. You can summarize your remarks and proceed as you see appropriate.

OPENING STATEMENT—DIRECTOR LEONHART

Ms. LEONHART. Good morning, Chairman Wolf, Ranking Member Fattah, and members of the subcommittee. Thank you for the opportunity to appear before you today to discuss the important work of the DEA. Over the years you have provided DEA with the vital resources we need to attack the world's largest drug trafficking organization, and I look forward to reporting to you on our accomplishments. There is a clear connection between drug trafficking, other forms of crime, and terrorism. As DEA investigates drug trafficking organizations, we contribute to our overall national security, whether it's locking up international arms dealers, like Viktor Bout, who was sentenced to 25 years in prison on four counts of terrorism, or Haji Bagcho, a notorious Afghan drug lord with ties to the Taliban, who was sentenced to life in prison on narco-terrorism charges. Or shutting down schemes to launder money through West Africa for entities linked to Hezbollah, or uncovering a plot that linked Iranian military officials to the murder of the Saudi Arabian ambassador to the U.S. on U.S. soil.

DEA continues to aggressively pursue some of the world's most dangerous transnational criminals. Just last week we arrested a West African drug kingpin who is suspected of facilitating the movement of cocaine from South America to Africa.

Violence in Mexico and Central America continues at high levels as Mexican cartels compete for control of the drug smuggling routes into the U.S. Mexican networks now control drug distribution in most American cities, but we are making progress against them. This past December DEA concluded project Below the Beltway, a highly successful 2-year series of investigations targeting the Sinaloa and Juarez cartels and affiliated violent street gangs here in the U.S.

DEA's working relationship with the government of Mexico is outstanding, as demonstrated by over 300 extraditions over the past 3 years, including high ranking traffickers, such as Jose Antonio Acosta Hernandez, who was sentenced to life in prison after admitting his role in 1,500 murders since 2008, including the triple homicide of a U.S. consulate employee and two consulate workers' family members.

Domestically, one of our greatest concerns is the diversion of pharmaceuticals into the illicit market. Over 6.1 million Americans currently use prescription drugs for non-medical reasons at least once a month. That is more than the number using cocaine, using heroin and hallucinogens combined. And in 2010, 58 percent of all U.S. drug overdose deaths were attributed to prescription drugs, with 75 percent of them being overdoses attributed to opioids.

Over the past 2 years, DEA has stepped up our enforcement and our regulatory efforts to identify and prevent diversion. For example, in Florida, Operation Pill Nation resulted in 63 immediate suspension orders, the closure of 41 pain pill clinics, 34 physician arrests, and over $19 million in seized assets. And DEA is continuing on our successful National Prescription Take Back Initiative. And since the first one in September of 2010, we've removed over 1,000 tons of medications from circulation.

Each year DEA denies drug traffickers nearly $3 billion in revenue through assets and drug seizures. We're dismantling major drug organizations and taking harmful drugs off the streets and we're making a difference in the lives of countless Americans. Since its high point in 1979, the overall rate of illicit drug use in America has dropped by 30 percent and drug use among high school seniors has fallen by 35 percent. Just since 2006 the number of current users of cocaine and meth has dropped 44 percent and 40 percent, respectively.

Future successes like these are threatened by this year's sequester and the prospect of future reductions in 2014. The President's budget request would put us on solid footing and your support is critically important if we are to avoid furloughs next year. We're achieving great success with the resources entrusted to us, and with your help we will continue to have a big impact on the safety and security of American citizens and drug trafficking around the world. So this concludes my statement, and I'd be happy to answer any of your questions.

Mr. WOLF. Well, thank you.

[The information follows:]

STATEMENT OF
THE HONORABLE MICHELE LEONHART, ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE
AND RELATED AGENCIES

April 12, 2013

Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee:

Good morning. Thank you for allowing me the opportunity to testify on behalf of the President's Fiscal Year (FY) 2014 Budget request for the Drug Enforcement Administration (DEA). It is my pleasure to appear before you today, and I look forward to discussing the valuable and courageous work of the DEA employees stationed across the United States and around the world.

Over the years, your support has provided DEA with the vital resources necessary to disrupt and dismantle the largest drug trafficking organizations in the world. DEA has aggressively managed our resources to ensure that every dollar you provide is used in the most efficient manner possible. As you are well aware, the current budget climate is significantly different from previous years, but whatever the climate, I assure you DEA will make the most of the resources we're given. Your support for the mission of the DEA is more vital than ever.

Today, I will highlight some of DEA's recent achievements as well as the most important resource and operational challenges we face today.

Recent Accomplishments

The efforts of DEA, and its Federal, state, local, and international law enforcement partners are having a real impact. According to the *National Survey on Drug Use and Health*—the Nation's largest, longest-running, and most comprehensive survey on drug use—the overall rate of drug use in America has dropped by roughly 30 percent over the past three decades.[1] More recently (since 2006), the number of past month (current) users of cocaine and methamphetamine have declined 44 percent and 40 percent respectively.[2] The *Monitoring the Future* study, the most important youth survey on drug

[1] Past month illicit drug use among persons aged 12 or older, *National Survey on Drug Use and Health* (formerly the *National Household Survey on Drug Abuse*), 1979 to 2011.
[2] Past month cocaine and methamphetamine use among persons aged 12 or older, *National Survey on Drug Use and Health*, 2006 to 2011.

use in America, has shown that the overall rate of illicit drug use among high school seniors has fallen by 35 percent since 1979.[3]

During the past year, we have reached significant judicial outcomes on several significant cases. In April 2012, Viktor Bout, a notorious international arms trafficker, was sentenced to 25 years in prison on four separate terrorism offenses. DEA led the investigation that resulted in Bout's arrest and conviction. In June 2012, Haji Bagcho, an Afghan drug lord and one of the world's largest heroin traffickers, was sentenced to life in prison for drug trafficking and narco-terrorism. In August 2012, DEA announced the seizure of $150 million in connection with a Hezbollah-related money laundering scheme. In October 2012, Manssor Arbabsiar pled guilty in U.S. court to conspiring with Iranian military officials to murder the Saudi Arabian Ambassador to the U.S.; this plot was discovered by DEA and successfully investigated with the cooperation of the FBI. Just last week, on April 4, DEA announced the arrest of seven alleged narco-terrorists who trafficked drugs in West Africa and elsewhere, benefiting terrorist organizations in Colombia.

FY 2014 President's Budget

DEA's FY 2014 President's Budget was carefully formulated and takes into account the difficult budget environment we currently face as a nation. This budget request focuses on the continuation of established and successful enforcement initiatives. For FY 2014, DEA requests $2,428,869,000 for its Salaries and Expenses (S&E) and Diversion Control Fee Accounts (DCFA). In addition, DEA will receive an estimated $557 million in reimbursable funding from the Organized Crime Drug Enforcement Task Force (OCDETF) program, the Asset Forfeiture Fund, the Department of State, and other agencies.

DEA's FY 2014 request provides funding for two significant Department of Justice (DOJ) program realignments, which will improve the efficiency of federal drug law enforcement. In FY 2012, Congress directed DOJ to close the National Drug Intelligence Center (NDIC) and reassign its high priority functions to other DOJ components. As a result, key NDIC functions and 57 positions were transferred to DEA during FY 2012. DEA's FY 2014 request includes $8 million to support these transferred positions and functions.

In addition, the FY 2014 President's Budget transfers funding for land mobile radios back to DEA and other components from a centrally managed DOJ account. While DOJ is currently modernizing the Federal Bureau of Investigation's (FBI) radio system to create a shared network, law enforcement components continue to rely on legacy radio systems, which require annual operation and maintenance costs associated with circuits, leases, and systems. DEA's FY 2014 request includes $16.3 million for these costs.

[3] Long-term trends in 30-day prevalence of illicit drug use in grade 12, *Monitoring the Future*, University of Michigan, 1979 to 2012.

DEA's FY 2014 request includes the elimination of 514 vacant positions, including 50 special agent positions, considered "hollow positions". After the elimination of these vacant positions, DEA will have a total of 10,699 positions, including 5,303 special agents, including fee funded and reimbursable positions, and will utilize an estimated 9,639 Full Time Equivalents (FTE) in FY 2014.

DEA's FY 2014 request also contains $12 million in program offsets. These include savings realized from increased efficiencies and reduced spending, including costs related to publications, travel, advisory contracts, and information technology (IT) devices. Additionally, the FY 2014 offsets include savings realized from collaborating on IT contracts and potentially through sharing contracts with other components. Finally, the FY 2014 President's Budget proposes the cancellation of $10 million in prior year unobligated balances from DEA's S&E Account.

DEA's Financial Position

Implementing the budget cuts mandated by the FY 2013 sequester requires DEA to make adjustments to our resource management strategy. Because DEA cannot make immediate reductions in funding for mandatory items such as rent, utilities, security, legal obligations, Department of State charges, and other reimbursable agreements, we are absorbing the sequester reductions by continuing the hiring freeze, cutting contracts, and limiting certain operational expenditures.

The sequester is forcing DEA to make many difficult choices. Fortunately, we have processes in place for dealing with resource shortages and making the most of the resources we have been provided. In FY 2007, DEA initiated the Zero Based Budget (ZBB) process as a way to allocate funding to program offices based on a review of current program requirements and agency priorities, rather than prior year allocations. ZBB ensures that priority programs and mandatory bills are fully covered and allocates any remaining funding to its highest priorities. DEA uses ZBB to conduct a thorough review of its base resources on an annual basis and it is serving our agency well during this sequester period.

Furthermore, DEA has been an active participant in the Administration's Campaign to Cut Waste. As part of this Campaign, the Administration has moved to cut wasteful spending and programs that do not work, strengthen and streamline what does work, leverage technology to transform Government operations to save money and improve performance, and make Government more open and responsive to the needs of the American people. In this context, DEA has achieved significant savings by mandating that its employees purchase the lowest available fare for all official travel. This policy applies to temporary duty travel, permanent change of station travel, home leave, rest and recuperation, and invitational travel. As a result of this policy, DEA reduced its travel expenditures in FY 2012 by over $6.5 million, a 36 percent reduction.

DEA's Focus on the Most Significant Drug Trafficking Organizations

As a single mission agency with the Federal responsibility for coordinating U.S. drug enforcement activities worldwide, DEA focuses on the organizations and principal members of organizations involved in the growing, manufacture, or distribution of controlled substances. This entails targeting the world's "Most Wanted" drug traffickers, identified as Consolidated Priority Organization Targets (CPOTs) as well as other Priority Target Organizations (PTOs). There are currently 67 CPOTs, a designation conferred by the OCDETF member agencies. A PTO is a DEA designation given to drug trafficking organizations with an identified hierarchy engaged in the highest levels of drug trafficking and drug money laundering operations with a significant international, national, regional, or local impact upon drug availability. DEA's ultimate objective is to dismantle CPOTs and PTOs so that reestablishment of the same criminal organization is impossible and the source of the drugs they distribute is completely eliminated.

Since we started tracking CPOTs in FY 2003 there have been a total of 166 CPOTs identified by DOJ. Cumulatively, 125, (75 percent) have been indicted, 93 (55 percent) have been arrested, and 50 (30 percent) have been extradited. FY 2012 was a very successful year. Four CPOTs were extradited to the U.S., four were arrested overseas and are pending extradition, six were arrested and are in custody outside of the U.S., and one CPOT was killed in a gun battle with Mexican law enforcement authorities. Also during FY 2012, DEA disrupted or dismantled 3,120 domestic and foreign PTOs, of which 524 were linked to CPOT organizations. This number represents a 3 percent increase over the 3,030 PTOs disrupted or dismantled in FY 2011 and a 16 percent increase over the 2,683 PTOs disrupted or dismantled in FY 2010. Overall, DEA's flagship PTO program has been highly successful and DEA is achieving its ultimate objective by dismantling these powerful criminal networks.

Although CPOTs and PTOs operate around the world, DEA has placed a special emphasis on Mexican drug trafficking organizations because they control the smuggling of drugs into the U.S, as well as drug distribution in most U.S. cities, and their influence is growing. Drug-related violence in Mexico continues at high levels as Mexican cartels compete for control of drug smuggling routes and the transportation corridors along the Southwest Border. For example, the vast majority of methamphetamine trafficked in the U.S. was produced in large labs operated by Mexican drug trafficking organizations operating on both sides of the Southwest border. DEA focuses on identifying and attacking these organizational structures through communications exploitation, following the money, and gathering information from cooperating sources.

DEA's successes against CPOT and PTO targets would not be possible without the strong working relationships we maintain with our Federal, state, local, and tribal law enforcement counterparts. DEA-led task forces and Federal interagency efforts act as force multipliers, drawing on the expertise and assistance of other agencies. DEA currently leads 194 state and local task forces, with a total onboard strength of 1,800 special agents and nearly 2,200 task force officers. DEA is also the lead agency in 78 percent of all OCDETF investigations, and participates in 88 percent of the OCDETF

investigations. Through these OCDETF investigations, DEA and other participating agencies identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply.

Information Sharing and De-confliction

Intelligence sharing, de-confliction, and cooperation between Federal, state, and local law enforcement partners is the key to combating transnational organized crime. To accomplish this, DEA uses primarily the Special Operations Division (SOD). With 26 law enforcement agencies represented at SOD, its mission is to bring together the law enforcement strategies and operations of the participating agencies to dismantle drug trafficking organizations by exploiting their command and control communications. SOD facilitates coordination and communication among offices with overlapping investigations to ensure tactical and strategic intelligence is shared between DEA and SOD's participating agencies. SOD not only serves as the de-confliction point for domestic and international drug investigations, it also plays a vital role in coordinating many of the Department's violent crime and international organized crime investigations.

Project Below the Beltway is one example of DEA's recent success in disrupting Mexican cartels. This two and a half year operation, culminating in December 2012, targeted the Sinaloa and Juarez Cartels and violent street gangs and their distribution network in America. Comprised of investigations in 79 U.S. cities and several foreign cities within Central America, Europe, Mexico, South America, and elsewhere, ***Project Below the Beltway*** resulted in 3,780 arrests and the seizure of 6,100 kilograms of cocaine, 10,284 pounds methamphetamine, 1,619 pounds of heroin, 349,304 pounds of marijuana, $148 million dollars in U.S. currency, and $38 million dollars in other assets. SOD coordinated ***Project Below The Beltway***, which involved the participation of the FBI, Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), the Internal Revenue Service (IRS), Customs and Border Protection (CBP), the United States Marshals Service, the Office of Foreign Asset Control, and numerous state and local law enforcement entities.

El Paso Intelligence Center (EPIC)

In addition to SOD, DEA also leads EPIC, a multi-agency tactical law enforcement intelligence center that focuses on supporting law enforcement efforts in the Western Hemisphere with a significant emphasis on the Southwest Border. EPIC houses employees from 25 Federal, state, and local agencies plus representatives from Mexico and Colombia. Through its 24-hour Watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts. This function is critical in the dissemination of relevant information in support of tactical and investigative activities, de-confliction, and officer safety. EPIC offers significant, direct tactical intelligence support to Federal, state, local, and tribal law enforcement agencies, especially in the areas of clandestine laboratory investigations and highway interdiction efforts. EPIC also has information sharing agreements with police agencies in all 50 states and provides support to associate members in the international law enforcement community. Increasingly, EPIC is becoming the central repository for

nation-wide Federal, state, local and tribal seizure information related to drugs, weapons, and currency.

DEA's FY 2012 appropriation included $10,000,000 in construction funding for an expansion and renovation project at EPIC. DEA appreciates the Committee's support for this critical infrastructure improvement. The architectural concept design was completed in January 2013. When completed, this project will facilitate enhanced interagency collaboration, allow for the participation of more member representatives, and improve the level of services provided to EPIC's numerous customers.

Financial Investigations

DEA places a high priority on financial drug investigations by targeting the financial infrastructure of major drug trafficking organizations and members of the financial community who facilitate the laundering of their proceeds. By seizing drug proceeds, DEA prevents drug trafficking organizations from using these funds to fuel the next round of drug production, further corrupting and destabilizing emerging economies and democracies. During FY 2012, DEA denied total revenue of $2.8 billion from drug trafficking and money laundering organizations through asset and drug seizures. This includes nearly $750 million in cash seizures. Between FY 2005 and FY 2012, DEA has denied more than $21.5 billion in revenue from drug trafficking organizations, $5.8 billion of which was cash.

DEA also addresses the threat that drug proceeds represent as a means of financing terrorist organizations. On August 20, 2012, DEA announced the seizure of $150 million in connection with a civil money laundering and forfeiture complaint filed in December 2011. This complaint alleged a massive, international scheme in which entities linked to Hezbollah, including the now defunct Lebanese Canadian Bank (LCB), used the U.S. financial system to launder narcotics trafficking and other criminal proceeds through West Africa and back into Lebanon. From approximately January 2007 to early 2011, at least $329 million was transferred by wire from LCB and other financial institutions to the U.S for the purchase of used cars that were then shipped to West Africa. Cash from the sale of the cars, along with the proceeds of narcotics trafficking, were funneled to Lebanon through Hezbollah-controlled money laundering channels. LCB played a key role in these money laundering channels and conducted business with a number of Hezbollah-related entities.

International Partnerships

Because of the international nature of drug trafficking, strong partnerships with foreign counterparts are vital in drug law enforcement. As DEA is not authorized to operate unilaterally overseas, cooperation with the Departments of State and Defense as well as foreign law enforcement agencies is essential to DEA accomplishing its mission. DEA has 86 offices in 67 foreign countries and more than 700 onboard employees stationed overseas. DEA's cooperative partnerships with foreign nations also help these nations develop more self-sufficient, effective drug law enforcement programs, which ultimately

benefits the United States. As part of this effort, DEA conducts training for host country police agencies at the DEA training facilities in Quantico, Virginia and on-site in the host countries. In addition, the U.S. has extradition relationships with many nations and DEA makes use of these arrangements whenever possible.

A key element of DEA's international efforts is the Sensitive Investigative Unit (SIU) program. DEA's SIU program helps build effective and trustworthy host nation units capable of conducting complex investigations targeting major drug trafficking organizations. The SIUs also work closely with host nation prosecutors to ensure that criminal investigations lead to effective prosecutions. SIUs consist of host nation investigators who are polygraphed, trained, equipped, and guided by DEA. DEA currently has 12 SIUs, which are comprised of over 900 host-nation law enforcement officials. The program provides DEA with a vetted and focused investigative force multiplier and a global transnational enforcement and intelligence network.

DEA supports the U.S. Government's Counternarcotics Strategy for Afghanistan through close partnership with the Departments of State and Defense. DEA also works to help the Government of the Islamic Republic of Afghanistan establish a capable, independent counternarcotics law enforcement presence to enforce the rule of law. This includes working bilaterally with host nation counterparts to identify, investigate, and bring to justice the most significant drug traffickers in Afghanistan and neighboring countries. DEA has made significant strides in achieving its objectives for Afghanistan and continues to carry out its strategic objectives. In particular, we have seen significant progress with the specialized vetted units we have established with the Counternarcotics Police-Afghanistan (CNP-A). DEA is carefully monitoring the continuing military drawdown and the scheduled conclusion of combat operations in Afghanistan at the end of 2014 and will adjust its activities and operations there to be commensurate with U.S. foreign policy missions going forward and the subsequent availability of resources to provide for the safety and security of our personnel and those of our host nation partners.

Prescription Drug Abuse

Prescription drug abuse is the Nation's fastest-growing drug problem. In 2010, approximately 38,329 unintentional drug overdose deaths occurred in the U.S., the equivalent of one death every 14 minutes. Of this number, 22,134 deaths were attributed to prescription drugs, and 75.2 percent of these deaths (16,651) were attributed to opioid overdoses, which equates to one death every 19 minutes due to opioid overdoses.[4] According to the 2011 National Survey on Drug Use and Health (NSDUH), 6.1 million people over the age of 12 used psychotherapeutic drugs for non-medical reasons during the past month. This represents 27 percent of illicit drug users and is second only to marijuana in terms of popularity. There are more current users of psychotherapeutic

[4] CDC Drug Overdose Deaths in the United States, 2010, published October 2012

drugs for non-medical reasons than current users of cocaine, heroin, and hallucinogens combined.[5]

In recent years, due to the overwhelming abuse of prescription psychotherapeutic drugs, more specifically opiates, the United States has seen a spike in new initiates of heroin abuse. Law enforcement agencies across the country have confirmed this and are reporting to DEA that they are beginning to observe young people who became addicted to opioid prescription drugs yet cannot continue to pay for them and who have turned therefore to heroin—a cheap alternative to prescription opioids.

When pain clinics replaced the internet as the primary source of pharmaceutical drug diversion in late 2008, DEA commenced a two-pronged reorganization of the Diversion Control Program to expand Tactical Diversion Squads (TDSs) throughout the United States with full criminal law enforcement authorities, and allow Diversion Investigators to focus on regulatory enforcement of the Controlled Substances Act (CSA). By March 25, 2011, there were 37 operational TDS's throughout the U.S.; by March 25, 2013, there were 51, with 7 more TDS's authorized. The TDS's and Diversion Groups have brought their skills to bear on Florida-based pain clinics that replaced internet pharmacies as the primary pharmaceutical drug diverters. As the pill mill threat is driven out of Florida towards the north and northwest, DEA is targeting the diversion by continuing to establish and use the TDS's proven law enforcement skills, the Diversion Groups' regulatory expertise, and educating pharmacists.

DEA continues to work with its law enforcement partners to address rogue pain clinics in Florida and elsewhere. DEA's ***Operation Pill Nation*** that began in February 2010 and the follow-up investigation ***Operation Pill Nation II*** that began in 2011 have resulted in 89 administrative actions, 67 Immediate Suspension Orders, 11 Orders to Show Cause, 11 surrendered DEA registrations, 41 Clinic closures, and over 90 arrests including the arrest of 43 physicians. In addition, over $19 million in assets have been seized as a result of these operations.

In addition to its enforcement efforts, DEA is continuing its very successful National Prescription Drug Take-Back Initiative. On September 29, 2012, DEA, working with more than 3,900 state and local law enforcement partners, conducted the fifth National Prescription Drug Take-Back Day. More than 244 tons of unwanted or expired prescription drugs were collected at over 5,263 sites nationwide. As a result of all five National Take-Back Initiatives, the DEA, in conjunction with its state, local and tribal law enforcement partners, has removed a total of 2 million pounds (1,018 tons) of medications from circulation. DEA has scheduled another National Prescription Drug Take-Back Day for April 27, 2013.

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[5] *National Survey on Drug Use and Health*: Volume I. Summary of National Findings, published September 2011.

Synthetic Drugs

The last threat I want to highlight is the one represented by the burgeoning array of synthetic drugs. In recent years, a growing number of dangerous products have been introduced into the U.S. marketplace. These include synthetic cannabinoids (commonly referred to as "Spice" or "K2") and synthetic cathinones (commonly referred to as "bath salts" or "glass cleaners"). Synthetic cannabinoids are so termed for their THC-like pharmacological properties, and have been identified in varying mixture profiles and amounts laced on plant material or related products. Synthetic cathinones are derivatives of cathinone, a central nervous system stimulant, which is an active chemical found naturally in the khat plant. These substances are often labeled "not intended for human consumption" as a means to thwart prosecution pursuant to the federal Controlled Substance Analogue Enforcement Act. These insidious substances are often marketed directly to teenagers and young adults as a "legal" alternative to other illicit substances such as marijuana. In reality, they are incredibly dangerous, with users having unpredictable and sometimes deadly reactions to these substances.

On July 9, 2012, President Barack Obama signed the Food and Drug Administration Safety and Innovation Act (FDASIA – P.L. 112-144), which amended several provisions of the CSA. We commend Congress for passing this important legislation. While the FDASIA controlled 26 different synthetic drugs under Schedule I of the CSA, the U.S. still faces a significant threat from these and numerous other emergent synthetic substances. As of January 31, 2013, the National Forensic Laboratory Information System (NFLIS), a DEA-sponsored program that collects drug chemistry results from cases analyzed by state, local, and federal forensic laboratories, shows U.S. law enforcement encountering 51 different synthetic cannabinoids, 31 different synthetic cathinones, and 76 other synthetic compounds.

Despite the enforcement challenges involved with synthetic drugs, DEA has had notable success in targeting this threat. ***Operation Log Jam*** was the first-ever, nationwide law enforcement action against the industry responsible for the production and sale of synthetic drugs. This DEA-initiated, multi-jurisdictional investigation targeted a group of manufacturers, wholesalers, sub-distributors, and retail distributors involved in the illegal distribution of synthetic cannabinoids and synthetic cathinones. This two-day operation targeting suppliers and sellers of synthetic cannabinoids and cathinones took place in July 2012 and encompassed over 300 search warrants, the seizure of over 5.3 million packets of cannabinoids, 1,900 pounds of cannabinoid powder, and over $40 million in U.S. currency. ***Operation Log Jam*** was led by DEA with assistance from ICE, the IRS, the U.S. Postal Inspection Service, CBP, the FBI, and the Food and Drug Administration's Office of Criminal Investigations, as well as countless state and local law enforcement members in over 109 U.S. cities.

Conclusion

Targeting the world's most prolific and dangerous drug traffickers is a dynamic and evolving mission. Not only as the DEA Administrator, but also as a career special agent,

I can tell you that DEA is making a difference in our communities, and our dedicated workforce feels the same. The men and women of DEA take pride in their accomplishments. By taking harmful drugs off of the street, dismantling major drug organizations, and seizing the profits associated with this trade, we are making our nation a safer place to live and do business. We will not stop until the job is finished.

Mr. Chairman and Members of the Subcommittee, this concludes my formal remarks. I would be happy to answer any questions you may have.

Mr. WOLF. We have a lot of questions and, we also have some questions that Mr. Rogers—the chairman of the full committee—wanted me to ask.

VIKTOR BOUT

Mr. WOLF. But before I do, on the Bout issue, again I want to thank DEA. And I think it's important for people to know, every time you would go to Africa, whether in the Congo or wherever, you would see airplanes on the field and they were Viktor Bout's airplanes. The number of weapons that he brought in and the number of Africans who have died because of Viktor Bout was unbelievable. And I think what you did is just incredible, I don't know you've ever gotten the recognition or the people involved. And, again, I want to acknowledge again, Ed Royce. Not a week would go by that he would not pursue this and stay with it.

MEXICAN DRUG CARTELS

Your issue that you raised here, too, if you'd say a little bit more, you say, Mexican cartels control or are operating in most American cities. Are they operating in Baltimore, are they operating in Philadelphia, are they operating in Washington, D.C., are they operating in Chicago, are they operating in LA, are they operating in—tell us a little bit more so we can have a better understanding as people look at your budget. How operative are they, how active are they?

Ms. LEONHART. Thank you for that question. Mexican cartels and their affiliates are operating in cities across the country. In every city you mentioned they control the drug market.

Mr. WOLF. They control——

Ms. LEONHART. They control——

Mr. WOLF. Like, they control the drug market in Chicago?

Ms. LEONHART. They control the drug market in Chicago, absolutely. Primarily the Sinaloa cartel for Chicago. But because about 90 percent of the drugs that enter the U.S. enter on the Mexican-U.S. border, they're also controlled by these Mexican cartels and these Mexican groups working for the cartels. And they have spread out over the years. It used to be most of the cocaine was controlled by the Colombian organizations, but then we saw a switch and we saw this influence of the Mexican cartels and actual takeover of the transportation, of the distribution, of the returning funds south to the sources of supply. That was all overtaken by the Mexican cartels over the last 10 to 12 years.

So the organizations, in order to grow their market, have also grown into not just big cities, now they're in mid-sized cities, they're in rural areas, and they have taken over the market in every drug that is popular for use here in the U.S. So I'm talking cocaine, methamphetamine, marijuana, heroin. And that's why they have gotten very—they've been able to grow their market and they've become very strong.

Mr. WOLF. Are you working with the FBI on this? The administration asked to zero out the gang center that we helped create a while back, and I think DEA participates in that. Is there a major effort by the administration with the FBI and everybody else with regard to this? I mean, do you think the average person under-

stands that the cartels from Mexico control all these operations in all these cities?

Ms. LEONHART. I know that we are working with all the law enforcement agencies, whether DOJ agencies or DHS agencies. We work together, we're on each others' task forces. The number one focus for all of us are the Mexican cartels and what's happened at our Southwest border. That is our biggest threat because those organizations control the drugs that are on our streets.

We work together in many ways. The Organized Crime Drug Enforcement Task Forces program has brought all of us in law enforcement, seven or eight agencies together, and we jointly target the organizations that are having the biggest impacts in the communities around the country. Beyond that, we work together on task forces at the State and local level. We have over 2,000 task force officers working on DEA task forces, and we put DEA agents on their task forces. And in many of these task forces you'll also have FBI, you'll have ATF.

We assist FBI with their violent crime initiatives, Safe Streets Task Force. We help ATF with their VCITs, their violent crime initiative. And then we share the drug intelligence that we have that has to do with gangs and violent traffickers with those task forces and with those agencies.

We've gotten very smart, all of us in law enforcement. With the dwindling budgets, we've needed to find a better way to focus our resources, focus our efforts on the traffickers that are having the most impact. And so through these task forces, through these programs, and the many initiatives and programs that you have all supported, we are like never before as Federal agencies working together to target these organizations and use our own authorities and expertise, instead of competing against each other, really work under one roof in many circumstances.

Some of the cases that I'll be talking about and that were in my written testimony, Project Below the Beltway, Operation Log Jam, these are huge projects and undertakings that not only Federal agencies, but our State and local partners have participated in and have worked on for a year or two. And then we do a simultaneous takedown to have the most impact on those trafficking organizations. And we are working together better now than ever before. And we have set up at DEA platforms. We've always believed in deconfliction, sharing that information to make sure we're not duplicating efforts, making sure that we can keep our officers safe on the street. And you have funded many of those. So through Special Operations Division, through EPIC, through the Fusion Center, these are ways we've put together these deconfliction systems so that we're working smarter and better together.

Mr. WOLF. Are the mayors like Rahm Emanuel or the mayor of Houston aware that the drug operations in their cities are controlled by the cartels?

Ms. LEONHART. Absolutely. The mayors, the governors, the police chiefs, the sheriffs, we've done outreach to all of those groups and have given briefings and have included their task force officers, to be able to warn them about the growing trends. This happened when we saw synthetic drugs all of a sudden pop up, it was our

State and local partners that were the ones that told us they were starting to see it, so we band together to go after that.

With the Mexican cartels, we now, working these multijurisdictional cases that are coordinated out of one center, which is the Special Operations Division, are able to take all these hundreds of cases around the country that you'll maybe work on the State and local level and never know that you're in Los Angeles, but it really is impacting Kansas City. We're now able to all work together. And because of these nationwide takedowns there is much better awareness by city leaders, community leaders, the citizens of these cities that they are under siege by these Mexican drug trafficking organizations.

SEQUESTRATION

Mr. WOLF. How is DEA managing staffing operations in light of the sequestration and across-the-board reductions? Will furloughs be necessary this fiscal year? And have you any recourse to funding mechanisms that will allow you to sustain current levels of effort? If not, what activities are likely to see reductions?

Ms. LEONHART. Thank you for the question, because these are tough budget times we've been preparing for several years. If you remember back in 2006, 2007, we implemented our own hiring freeze, anticipating rough budget times ahead. We've been under a DOJ-imposed hiring freeze for the last couple of years. So sequestration on top of that is really devastating for a law enforcement agency. However we have found ways, we're just getting smarter with what we do. We've consolidated a number of programs. We've looked within our own house to try to figure out what we can do to save money and to scale back to avoid furloughs. And as I sit here today, I believe we'll be able to get through this fiscal year without furloughs. That will not be the case in 2014 if sequestration continues.

Mr. WOLF. Well, if you do see that happening, I hope you'll let us know, because I think the subcommittee would be certainly open to reprogramming to make sure that you could limit furlough, because personnel is one of your most important assets. So if the furloughs come let us know.

Ms. LEONHART. Absolutely.

DRUG MARKET

Mr. WOLF. When you appeared 2 years ago you set an estimate for the global illicit drug market based on U.N. reporting at about $300 billion. What is the current estimate?

Ms. LEONHART. Well, that was an estimate of what the illegal drug market around the world is worth. And it's still around the same, I don't think the figures have changed much, it's still about the same. Far higher than any other illicit market. I think after that the next was weapons or human smuggling.

[The information follows:]

DRUG ESTIMATE

UNITED NATIONS OFFICES ON DRUG AND CRIME—WORLD DRUG REPORT 2012

The economic dimension of the international markets for opiates and cocaine is relatively well-studied UNODC estimates suggest that the total retail market for co-

caine amounts to some $85 billion [1] and the opiate market amounts to some $68 billion (figures for 2009).[2] The overall value of the illicit drug market was estimated at about $320 billion for the year 2003, equivalent to 0.9 per cent of global GDP.[3] The 2003 estimates suggested that the largest markets in value terms, calculated on the basis of retail sales were North America (44 per cent of the total) and Europe (33 per cent), followed by Asia, Oceania, Africa and South America. Though no new breakdown has been established since, partial data suggest that the proportions may have declined for North America and increased for the other regions.

PRESCRIPTION DRUG ABUSE

Mr. WOLF. Mr. Rogers asked me to ask a couple of these questions. The subcommittee continues to be concerned with rising prescription drug abuse, including that driven by so-called pill mills or criminal organizations. It is the Nation's fastest growing drug problem according to ONDCP, which reports that nearly one-third of those age 12 and over who use drugs for the first time began with prescription drug abuse. And ONDCP has reported the per person dosage of powerful opioids prescription drugs quadrupled over the 10 years, and that overdoses, once almost always due to heroin use, are now increasingly due to abuse of prescription painkillers. We know that about 10 percent of your budget and 14 percent of your personnel are devoted to your regulatory mission for diversion control programs. On the enforcement side however, how is DEA targeting efforts at this problem? And also what percentage of young people? You said 6.1 million are using. Was that the number that I remember you saying in your testimony?

Ms. LEONHART. Americans.

Mr. WOLF. Americans.

Ms. LEONHART. Yes.

Mr. WOLF. Okay.

Ms. LEONHART. But I can talk a little bit about teens and what they are using. Actually it was this committee that helped us try to figure out how to have a culture change within the Drug Enforcement Administration when we saw this prescription drug problem explode. A few years ago you gave us approval to use—to move more DEA agents into the Diversion Control Program and it has really paid off.

The pill mill situation came about because we were actually successful going after use of the Internet for controlled substances. And the Ryan Haight Act, which you passed, made a complete—it has moved from the Internet now to these pill mills. So what we've done over the last couple of years is, again, not just DEA, this is working with our State and local partners and ground zero for that was in Florida. We identified the pill mill problem, that these pain clinics were opening up around Florida. Early on it was primarily Dade, Broward area. And we noticed that they were cash-and-carry businesses. We noticed that most of the owners of these pill mill—of these pain clinics were not doctors, they were businessmen, they were investors. Many of them had very sordid backgrounds. We started looking into it and with our State and local partners started to target the pill mills that were popping up

[1] World Drug Report 2011.

[2] The Global Afghan Opium Trade: A Threat Assessment, 2011 (United Nations publication, Sales No. E.11.XI.11).

[3] World Drug Report 2005, vol. 1, Analysis (United Nations publication, Sales No. E.05.XI.10).

in strip malls, with having security guards out front. You'd go around the parking lot and you'd see cars from Tennessee, from Kentucky, from Georgia, you'd see the plates from all these out of states—different states.

Gathering all that intelligence and trying to identify what was going on, these pain clinics, rogue pain clinics, ended up being the primary source of the pill problem not just in Florida, but all up the Southeast, up the East Coast, and especially have devastated states like Tennessee and Kentucky, where the people would come down, jump from pain clinic to pain clinic, get as many pills as possible, go back up and sell those on the street.

So in a concerted effort to shut down these pill mills we started an operation called Operation Pill Nation, which has really, really paid off, because we have been able to close over 41 of those pill mills. We've arrested over 90–43 physicians, and we've seized more than $19 million and their assets. That caused a major shift in south Florida. You started to see the pill mills move up to northern Florida, and then start jumping into Georgia. And now we see them up into Ohio.

The State of Florida passed some very good legislation that put restrictions on those pain clinics. And so now we've seen the pill mills shift and spread out around the country, not necessarily all in Florida anymore. And our big problem now is Texas, California, Georgia, Ohio, they all have pill mills. And we have the resources through this committee, we have Tactical Diversion Squads (TDSs) all across the country that now join up with State and locals. And we have agents and diversion investigators on those that target the people most responsible for diversion in their area. A lot of places it'll be pill mills, sometimes it's the doctor shoppers.

Mr. WOLF. Well, I have other questions. I'm going to go to Mr. Fattah. But I want to just ask you one thing on this issue that has been a priority for Chairman Rogers. Can you give us the top 10 States where you think it's a problem? And then are the States cooperating? And what the committee and subcommittee would like to do is it to write a letter to all of the governors, but you may be a governor not realizing that, because they're shutting these down in Florida, they are moving. You know, I would be glad to do a letter, and Mr. Fattah could join me, to these governors, not scolding them, but just telling them that this is a growing problem and if there's anything we can do. Where do you think are the biggest, the top 10 problems? And then if you can give us some information that we could write the governors.

Ms. LEONHART. I will tell you that the governors have really taken on these issues, whether it's the governor in Ohio——

Mr. WOLF. Okay.

Ms. LEONHART. Where these pill mills have gone to we have seen very good action by the governors. And the last time I appeared before you we had talked about we had problems in Florida.

Mr. WOLF. We wrote the Florida governor.

Ms. LEONHART. And you wrote the Florida governor. I do know that, and some of my staff that's even here, they have done presentations around the country and specifically to a number of governors who are interested in moving on the problem.

Mr. WOLF. Governor Snyder did a good job, didn't he?

Ms. LEONHART. Yeah. The governors have done an amazing job in pushing for changes in legislation in these States. There's more that can be done.

Mr. WOLF. Well, without embarrassing any governor, if there's any area where you think that the problem is moving to and there has not been an adequate response, we would be glad to send them a letter.

Ms. LEONHART. Thank you.

On your question about which States——

Mr. WOLF. Yeah.

Ms. LEONHART. I did bring some information with me, because there's——

Mr. WOLF. You want to tell us.

Ms. LEONHART [continuing]. There's two pill problems, there's the oxycodone problem which Florida had, but in Texas and California it's really a hydrocodone problem that the pill mills are responsible for. So for oxycodone, where we're looking at the doctors that are dispensing, the top States, Mr. Fattah, are Pennsylvania, California, and Georgia. And for pharmacies with oxycodone it's Florida, Pennsylvania is number two, and California.

With hydrocodone it changes a bit, and for doctors it's California, it's Georgia and it's Illinois. But for pharmacies it's California, Texas, and Tennessee. So those really are the primary States where we've seen the pill problems.

Mr. WOLF. Well, just one quick question. Are the manufacturers helping you? There for a while the one manufacturer up in Connecticut was the problem. Are the manufacturers participating, helping, or are they hiring a big lobbyist in town to fight you? I mean, where are they today?

Ms. LEONHART. Well, I would say those that realize that they have been a part of the problem and are cleaning up their act and are working to fight diversion, they've gotten the message. But there have been some that have been slow to get the message and——

Mr. WOLF. Do you want to tell us who they are so we can write their CEOs to tell them that what they're doing may actually be destroying young people and they have a moral obligation and maybe even a legal obligation to do something, and we'll go to put their names in the Congressional Record, I'll make a statement on the floor. Can you tell us who are two or three companies that you think are not carrying their burden?

Ms. LEONHART. What I'll do is I'll take that back to my Diversion staff.

Mr. WOLF. Okay.

Ms. LEONHART. Because there are some investigations that I wouldn't want to talk about.

Mr. WOLF. Okay.

Ms. LEONHART. But if we identify those——

Mr. WOLF. I'll be glad to write them.

Ms. LEONHART [continuing]. That need that message we'll——

Mr. WOLF. And if they hire lobbyists in town from big law firms, we'll be glad to identify the big lobby law firms that have taken the garbage money that has resulted from the death and destruction of families and mention them, too.

Mr. Fattah.

Mr. FATTAH. Thank you.

SEQUESTRATION

Madam Administrator, you have a lot on your plate. So now you have some 10,000 employees. You've mentioned you've had a hiring freeze. Is that correct?

Ms. LEONHART. That's correct.

Mr. FATTAH. And how does that, overlaid with the automatic cuts in the sequester, affect you, can you give the committee some sense of what this has meant day-to-day or what it will mean going forward?

Ms. LEONHART. Well, with the hiring freeze in place this year we will lose about 700 positions just from the hiring freeze. But then——

[The information follows:]

HIRING FREEZE CLARIFICATION

Administrator Leonhart stated that with the hiring freeze in place this year, DEA will lose about 700 positions. DEA will lose those positions over two years, FY 2013 and FY 2014.

Mr. FATTAH. Is that through retirements and attrition?

Ms. LEONHART. No, that's actually positions that become open that we're not able to fill.

Mr. FATTAH. Okay.

Ms. LEONHART. It's about 700. And then from sequestration that adds an additional 355 that, if we had to furlough people, it would be——

Mr. FATTAH. Have you made a decision about whether you have to furlough people? I know that you have, what, 45 days since enactment of the CR——

Ms. LEONHART. Right.

Mr. FATTAH [continuing]. To come up with an operating plan.

Ms. LEONHART. We have done everything we can to avoid that, we have cut where we can. I think we will avoid that in 2013. But in 2014, if we have to furlough, that would be an additional equivalent of 355 positions, for a total this year and next year then, a total of 1,055 positions we'd lose. Many of them are agent positions. We're looking at about 39 analysts. And that would be more than—losing close to the 300 agents is about 6 percent of our onboard agent strength.

Mr. FATTAH. So of the 10,000 FTEs you have, how many are agents—in broad strokes how many are agents, analysts, and others?

Ms. LEONHART. It's about 50 percent, just under 5,000.

Mr. FATTAH. Okay. Fifty percent are agents. And the rests are analysts and other support——

Ms. LEONHART. Analysts, diversion investigators, chemists.

Mr. FATTAH. So in each of your various jurisdictions you work in tandem, your agency works in tandem with the U.S. attorneys around what charges are going to be brought and so forth and so on, right?

Ms. LEONHART. That's correct.

DRUG MANUFACTURERS

Mr. FATTAH. Okay. And the—this, I guess, prescription drug abuse, Chairman Rogers has made a very significant point around this and the facts bear him out in terms of the number of deaths, in terms of the disruptions in families. So this is something you've done some work on with the Pill Nation. As I would understand it, when the chairman asked you about manufacturers, there's some believe, I don't know the truth of it, that they could make these OxyContin in a different format in which it would not be so enticing for people to misuse and that it wouldn't have the same effect on a person and therefore you wouldn't have people carrying on in the way that they are carrying on, try to steal, rob, kill to get this prescription drug. Is that something that the DEA itself is interacting is with manufacturers around, is that somewhere else in the government where those discussions are taking place?

Ms. LEONHART. Well, those discussions actually take place in a number of places within the government, and we all obviously support any efforts for tamper-resistant solutions to some of this problem. And there have been some very good—there has been good progress on that. What we worry about is then the next set of drugs that come out or the generics and the importance of making sure that whatever is being manufactured, that they try to come up with a tamper-resistant solution.

Mr. FATTAH. Obviously, at the end of the day, and you've been at this for a while through multiple administrations and multiple posts inside the agency, at the end of the day, whether it's household products, whether it's prescription drugs, illegal drugs, the real challenge is how do we create a society in which people don't want to use these things, no matter how readily available they may be. And with so much profit involved, you know, there are people who are willing to do almost anything to try to sell it.

NEUROSCIENCE

So one of the things that the drug addiction judges have been focussed on is some of the evidence in brain research that now talks about what we may be to do about addictions and treatment. Is it your impression, given where you sit, that the Nation needs to be doing more on the demand side, around treatment and—because at some point, whether you have 10,000 agents or 20,000 agents, if you have people who are willing to pay anything, do anything to get a particular substance, it's a very challenging environment in a country of 300 million, and with our free ability as citizens to travel, to do almost, you know, to confer with who we want to, for you to police all of that. So talk just a little bit about what you think about where we need to be going on the demand side.

Ms. LEONHART. Well, the key is, you know, putting our efforts on cutting the demand. So it's prevention at the start. And this Administration's drug control strategy is very balanced. And we just play one part, enforcement is just one part. It really starts with the prevention, the treatment, the enforcement piece that we're responsible for. And we feel we want to do our part. And then, you know, looking at more recently what to do about recidivism, what to do about reentry.

I'm a firm believer, in fact the DEA is a firm believer in drug education and prevention. Whatever we can do on the front end we're going—it's going to pay dividends and cost our country less in the long run. But the problem is we're bombarded, our kids, our teens are bombarded with these mixed messages. And the more available drugs are, the more they will use them. And the best example is what's happened with prescription drugs. When you pool teens over the past several years and you ask where did they get their prescription drugs——

Mr. FATTAH. The family medicine cabinet.

Ms. LEONHART [continuing]. It's not from a drug dealer, they got it from the family medicine cabinet or friends and family. So we firmly believe that every dollar put into prevention, and we've got great partners out there from these communities, every dollar that's put into prevention is going to help us not have to see that person in the criminal justice system down the road. So we're big believers in prevention. And last year and this year, you know, funding, it's really been the first time that more money has actually gone to treatment and prevention than it has for domestic law enforcement. That's actually a good thing. For years the enforcement piece, we've been funded, we've done our job, it's those other pieces of the strategy that we need to make sure are funded properly and working together. That is what is going to help us solve our drug problems.

Mr. FATTAH. Thank you very much.

Thank you, Mr. Chairman.

Mr. WOLF. Thank you.

Mr. Bonner.

Mr. BONNER. Mr. Chairman, my staff has prepared some great questions but I am going to submit it for the record, because I'd like to just go based on what the Administrator's testimony.

DRUG CARTELS

Mr. BONNER. And I'd like to get a better understanding, without asking you to call any names or divulge anything that's part of an investigation, but tell us a little bit about the cartels. How big are they? Just use one hypothetically. How much money are we talking about? What type of drugs are we talking about that are part of those, if you could.

Ms. LEONHART. I'll talk about the Mexican cartels and I will tell you that a good example would be the Arellano Felix cartel, that when I was running an enforcement group in San Diego in the late 1980s and early 1990s they started to rise as a very powerful cartel. They didn't specialize in one drug because Mexican drug cartels will do whatever they can that makes money. So they're polydrug organizations, they've actually been around for years. Their membership and their leadership was basically untouched for years.

Mr. BONNER. Untouched by the Mexican government?

Ms. LEONHART. Untouched by—these cartels were actually in control for many years in Mexico. And it wasn't until December of 2006 when President Calderón became President and decided that he was going to go after it that we really started to see progress in going after the leadership, took away at the leadership, but with

that have initiatives that went at the shadow facilitators, the people that helped the cartels do business.

But the average cartel in Mexico survives with a number of things. They've got their ready sources of supply out of South America because they've developed those relationships over the years. They used to work for the Colombian cartels. There are no more Colombian cartels, because the Colombian National Police, Colombian government with the assistance of the United States took care of business there.

So as they were—as those cartels were weakening in Colombia, the Mexican cartels were getting stronger and stronger. And they were—because they were polydrug, and because actually Mexican organizations have supplied drugs around this country for years going way back to when they were the primary heroin supplier for many years, they had the routes, they had family members and members of their organizations already living in the United States. They've just grown. And there were seven over the past 5, 6 years, there have been seven primary drug cartels that spend a lot of time fighting themselves, fighting each other. And as we started to have success in dropping—well, cocaine was their—they all then dealt in cocaine. They became powerful off of cocaine. That was the money they were using to corrupt government officials, that was the money that they actually used to get powerful.

As we were working with Colombia and South America and having impacts there, they started to diversify more and you started to see them get into methamphetamines, which they hadn't done prior to, I would say, mid-1990s. You saw laboratories, because enforcement in the United States did such a good job, international chemical control did such a good job, they pushed these laboratories into Mexico. So all of a sudden these seven cartels also start dealing in methamphetamine. And one or two of the cartels, one in particular, La Familia Michoacan, where most of the big labs were, started to control the meth market in the United States.

Each of the cartels is fighting for territory. There has been a lot of damage on them, a lot of their leaders have been locked up, they're fighting for control. I like to say the young turks now are starting to take over these organizations because we've locked up so many of the leaders. They're fighting now for that limited cocaine market because we've had such great drops in the cocaine availability and cocaine use. So they are looking for other things. So they started to sell more heroin. We started to see more heroin come up, and it couldn't be at a worse time, because as the prescription drug problem exploded, all those people who are now becoming addicted to painkillers, at the point they are completely addicted and it becomes too expensive for them to use pills, they go to powdered heroin. And who is supplying the heroin? It used to be the Mississippi River split the country in half, and if you're on the East Coast you had South American, Colombian heroin. If you were to the west you had Mexican-controlled heroin.

The Mexican heroin has made its way all across the country. So these Mexican cartels have gotten stronger and stronger and have gone where they needed to go depending on the trends, they took advantage of a lot of enforcement successes here in the United States and down in South America.

So fast forward to the last 6 years working with the Calderón administration and targeting each of those cartels really has put them on the run, it's changed—they've changed leadership and changed hands. La Familia, which I just mentioned, which 20 years ago I would have said controlled most of the methamphetamine in the country, La Familia was hurt so bad they splintered into two groups, and now those two groups are fighting.

The Gulf Cartel was very big and powerful. We went after their leadership, we hit them very hard years back. They splintered, and their enforcement side was called the Zetas. They became their own cartel. So you have this shift and it's all about shift for power.

And what we've done to confront that and how we confront the cartels is, working with—developing our Mexican counterparts, sharing—finding ways to share intelligence with them, finding ways to identify who's operating on both sides of the border, bringing in State and local law enforcement. The last 6 or 7 years the country, law enforcement has been focusing on doing what they can to fight these organizations in their neighborhoods. And I would say—we've had operation after operation after operation, and each time we do it has weakened those cartels.

So where are they today? Well, a lot of their leaders, a lot of their money launderers, a lot of their transporters—and we'll talk in a little bit about one of their assassins—you know, we put them in jail, or the Mexicans have arrested them based upon intelligence that we've shared, they've extradited them to the United States, over 300 extraditions in the last couple of years. And we are gaining information from those leaders being locked up in a U.S. drug—U.S. jail cell. We're learning more and more about their organizations and doing a better job of attacking them.

So it's they are powerful, they control the drugs on the streets of our country, but I believe that law enforcement everywhere, I don't care if you talk to a sheriff, sheriff in your community, they are going to tell you we are focusing on Mexican traffickers because they're controlling the drugs in our community. So we're finding tools for our State and locals to help them out, and one of the best tools for them has been the El Paso Intelligence Center where you can be a trooper up in Philadelphia and stop a car and you can place a call to EPIC, a 1–800 number, and you can get information on that car, the driver, if they've ever been stopped, when they last came across the U.S.-Mexican border, what other agencies are looking at that car and that individual. And these tools that you've help fund, we all in law enforcement, from DOJ law enforcement agencies, DHS agencies, and State and locals are concentrating on going after these cells in the United States that work for these cartels.

Mr. FATTAH. If the gentleman would yield for a quick second.

Mr. BONNER. Happy to.

Mr. FATTAH. The problem of course is that, you know, if we were talking 40 years ago we were talking about a different organized group of criminals doing the same thing. And the concern is 40 years from now we're talking about a different group. So that's why I asked the question about the demand, but this is just the current occupants.

Mr. BONNER. Well, I appreciate the ranking member's observation. And the reason I asked the question that I asked was, you know, I would give anything if you could go to every Rotary Club or Lions Club or Kiwanis Club in the heart of America, because the chairman was asking, you know, are these Mexican drug cartels the cancer, if you will, in Chicago and in Los Angeles? And obviously they are, but they are also in small town America that may never have a chance to hear from the Administrator of DEA. They may hear it through the police chief or the DA or the sheriff and that story may resonate.

PREVENTING DRUG ABUSE

Everyone has their own drug story. It's a family member, it's a friend that got addicted. Listening to you give that outstanding summary of kind of the situation as it is today, and thinking about what Mr. Fattah said, what can we do that we're not doing? There is a whole new way of reaching young people through social media that didn't exist when we were their age. Are there new ways to grab them to help them see the danger, the risk involved in it that we—that perhaps people at DEA are using now?

Because as a parent of a 15-year-old and a 17-year-old, that's what scares the hell out of me, is what are they going to be exposed to by someone who's got an evil heart and who doesn't care who they destroy so that they gain the almighty dollar. And so I'm thinking about it as a father now.

Ms. LEONHART. And I think as a mother and a grandmother. And most parents that we talk to say the same thing, the chance of a terrorist killing my kid, I'm not worried about that, I'm worried about what's happening on the street. I'm worried about the peer pressure, I'm worried about the availability of drugs. And let's face it, the messaging over the last couple of years is sending these mixed messages—now not even mixed, now it's just the message to kids you're not cool if you're not using drugs, drugs are not harmful, you know, everybody who uses—you know, the prisons are filled with people who have just used drugs, not trafficked drugs, which is not the case. It's the wrong message.

And I can tell you from writing op-eds, our folks out there trying to send the message, it's not the message anybody wants to hear right now. But you will get an article about the Hollywood stars who are all saying that there's no problem with drugs. You will not have anybody print what the Drug Enforcement Administration or the IACP or the National Sheriffs' Association says.

So we've found different ways to get that message out. We have a traveling museum that we're hoping is coming to Baltimore that has had millions of visitors as we have moved it around the country. We still, even in the cuts, we decided to prioritize, that we cannot let two Web sites that we've built go, because one speaks to kids and one speaks to parents and we will do everything we can to protect those Web sites to continue to keep them up.

I am very worried for our country. Being in law enforcement for 33 years, being a DEA agent this long I'm very concerned, just like you. And I think it takes each one of us remembering that these messages are not good for our kids.

Mr. BONNER. Mr. Chairman, could I ask one more question?

Mr. WOLF. Anything you want to do, yeah.

Mr. BONNER. You've mentioned this three times, Madam Administrator. And first of all, I can only imagine the pride that the 20,000 people at DEA have that someone came up from within the ranks like you have to be the Administrator. I am sure they are proud to have you as the captain of their team.

[CLERK'S NOTE.—DEA advises that DEA has closer to 10,000 people.]

STATE DRUG POLICIES

But you've talked about mixed messages and bombarding teens with these mixed messages, this is totally unscripted, but just your personal view, as different States decide to go, legalize marijuana for instance, that's going to be the first, as Mr. Fattah said in 40 years who knows, it may be LSD or heroin, we don't know what will be legalized, but as different States choose that path, the voters in those States, does that create an added challenge in terms of that mixed message? Because I can imagine a college student at the University of Alabama who is from Colorado where it's legal to purchase marijuana, and he may or she may not see the problem when they go to a university in my State or in the Commonwealth of Virginia. Is that going to be an added challenge?

Ms. LEONHART. Think about the challenge we had when—and I was in California shortly after they passed medical marijuana in 1995–1996, Prop. 215, caused major confusion in the State and then major confusion in the States surrounding California. The same thing has happened as 18 States now have passed medical marijuana laws. There is confusion. I will go to a high school in a non-medical marijuana State and you'll talk to the kids and they believe marijuana is already legal. And they say, well, it's medicine so it can't be bad.

So the mixed messages. So starting with if they're hearing messages that, well, it's not as harmful as alcohol, oh, it's not as harmful as cigarettes, it's not going to cause any problems for you and there are no health consequences, and they are hearing these messages in movies, in ads, they're bombarded with it, and then they go home and talk to their parent, what does a parent now say in a State that's moved to legalize these? It used to be, son, it's illegal. And we for 30-plus years know from polling teens, these surveys, that the number one reason that kids stay away from drugs is because they're illegal and what would their parents say. What have we just done?

Mr. BONNER. Thank you.

Mr. WOLF. Great question, Mr. Bonner. Thank you.

Dr. Harris.

Mr. HARRIS. Thank you very much.

And let me follow up with that. First, I want to thank you for the job you do, because I have five children and some of them are always teenagers, and the greatest fear you have as a parent is—and you know the statistics, you know your child is much more likely to die from a drug overdose or of complication of drugs than from a firearm, that's the bottom line. So we have fears of that.

I'm going to follow up on that, because this is of great concern to me. I'm a physician, I hold a DEA license, you license me. And

it's the only Federal license I hold as a physician, because we made a decision a long time ago that drugs were such a serious problem that the Federal Government was going to preempt and I'd have to hold a Federal license. Again, when I practice medicine it's under a state license with the exception of a controlled dangerous substance when it's under both a State and Federal license, and for a long time it was just a Federal license.

Here's the issue. We have watched States disregard the Federal preemption on marijuana, which is a, as you know, it's a Class I. You know what Class I means. The Federal Government has decided marijuana has no medical use. That's it. I mean, that's the definition of Class I, you can go and look at the DEA classification.

So we have decided not to do anything, not to change that at the Federal level, but not to enforce the Federal law about marijuana. And I couldn't agree with you more about the message it sends to children. And you know as well as I why these pill parties are happening, it's because they're getting that drug out of their parent's drug cabinet. Now, what's their parent going to tell them, you know, it's good for me, but it's not good for you? I mean, it's a medicine for me, it's not good for you. They're starting with what society is telling them is a beneficial medicine because they know their parents aren't taking these drugs because they're not beneficial, they think they're actually good for their parents. We're telling them now marijuana is actually good, it does good things.

And as you have observed, these are gateway drugs. The problem is they don't always end with marijuana or the pill party, they can end with heroin, cocaine, drugs that don't really have—I mean, nobody has cocaine in their medicine cabinet. We use it in the hospital under some conditions, but nobody has heroin in their medicine cabinet. They start with the drugs that we have sent a message through various ways that these are okay. And I've got to ask you, what are we doing to enforce the Class I categorization of—classification of marijuana as a Class I drug?

Ms. LEONHART. Well, I assure you that I'm still an agent even though I'm the Administrator of DEA, and the almost 5,000 other agents of the DEA all took the same oath of office. We took an oath. We swore that we would uphold the drug laws of this country. And so we continue to do that.

In Colorado we're continuing to do marijuana cases with our limited resources. We are going after major drug trafficking organizations that traffic marijuana. And remember most of these organizations, tied again to cartels, are all about greed and money, and they're going to distribute and they're going to deal in any drug that makes money for them. So it's hard to separate this is just a marijuana organization. They're all dealing whatever makes money.

We're continuing to do this in Colorado and I'll give you the perfect example. We are still out enforcing Federal law because we are paid to do that and we believe in doing that. So even during all this confusion after November on the votes in Colorado and Washington, my agents are still out in those two States enforcing Federal law. Even with it passing in the State of Washington, they went after a dispensary, and the dispensary owner who has a dispensary in Seattle was sentenced in January, after this happened,

was sentenced to 6 years in prison for running that dispensary. They found that he and his associate were also hooked up with people dealing MDMA, Ecstacy. They seized a lot of money from them. We will continue to go after these organizations.

Mr. HARRIS. But are you urging—and I understand that, but what I've heard from agents is that it's not a priority. And I don't see the Department of Justice suing the States who have passed laws that on the face are illegal under Federal law. And I know because I sat on the Health Committee for 12 years in Maryland, this issue came up. And as you know, Maryland took a very different approach, it said we are going to actually—you can get this drug but you have to be in a study to prove the efficacy and it's through academic medical centers, not just like California and Washington, look, it's just plain legal.

I don't see the administration—because you said, the administration has this balanced approach—but I don't see the administration going to the State of Washington or Colorado and saying, we will see you in Federal court because you—because the Federal law preempts the State law, you have passed a law in clear contradiction to Federal law. And we won't argue State's rights issues. I'm worried about the message we're sending. We have the administration saying we understand that the Federal law says it's no medical use, it's CD I, and the administration isn't saying let's go and let's change it, let's make it Class IV, let's make it some other class. They're choosing not to enforce the Federal law. And I think that sends a—that just amplifies the message that children are getting, because we look to the President for leadership. Why isn't the President saying that's the wrong thing to do in that State, let's do it the right way, let's go to Congress, let's change the law, you know. But we have these laws and we are just not doing that. I would think that would be frustrating for you because your middle name is enforcement.

Ms. LEONHART. And that's why we've continued our enforcement efforts. So a lot of people will say, what has happened, what have you guys changed since November? And I said nothing, because we are still enforcing Federal law. For us it's about resources, it's about what do you do—you know, there's in Colorado and in Washington, I would say for both—both States have about 45 agents or so.

[CLERK'S NOTE.—DEA clarified that Colorado and Washington have about 60 agents.]

And then half of our workforce, we have a force multiplier and that is our task force, task force officers. So that together they get the job done. With the passage of these bills we are very concerned about what happens with our task force partners now.

Mr. HARRIS. True. And that's exactly why I suggest the most cost-effective way is for the Federal Government just to tell the States, look, let's go to court and let's settle this, you can't—you know, we preempt. And I won't go any further on that. I think you get my point.

PRESCRIPTION DRUG MONITORING PROGRAMS

Just one other very brief question. The PDMPs, which are the Prescription Drug Monitoring Programs that these States have,

they're effective. But as you point out, this problem crosses State lines. You've got the license plates. There are many different states coming into jurisdictions that have pill mills, and it doesn't work unless there's kind of cross-border coordination. Is that one of the things that the DEA does, is that something that is becoming more important as time goes on, to make these effective ways to enforce—effective tools for enforcement, the PDMPs?

Ms. LEONHART. I'm very glad you brought up PDMPs because I was the Deputy Administrator in 2006, and when I started looking at the PDMPs in the middle of seeing this explosion of prescription drug problems, there were only 20, 20 States that had them in 2006. And now luckily we have 49 States that have them, almost the entire country. And Missouri was the only State that did not and they introduced legislation in January.

[CLERK'S NOTE.—Administrator Leonhart stated that Missouri passed Prescription Drug Monitoring Plan (PDMP) legislation in January. Missouri introduced, but did not pass, the legislation. If the legislation passes, all 50 states will have the ability to implement PDMPs.]

We will have the ability to have 49 States have these PDMPs, and this isn't even anything that DEA funds. We just support it and we see the benefits and the successes of having PDMPs. You hit on something that we're hoping that the next—you know, there is money available under the Hal Rogers grant money at DOJ. I believe for 2014 they're asking for $7 million for that. But the next step is how do we hook them up and make them interoperable. And there are some States that have taken on that themselves that have done a great job. I think it's Kentucky who kind of led the way on that and it's shown results.

That is the wave of the future, that is the way—if the 50 States have PDMPs and they find a way and there is some funding available to look at ways to cheaply hook them up, then think about it when we go to electronic health records and, you know, hooking that up with the health record so that when a health record is opened up then there is, like, an automatic check of the PDMP.

You know, that's what I see for the future, but it does take baby steps, and a lot of it is that some of the reluctant States were States that really didn't know that they had a problem until it all of a sudden was there. So we're happy to see that Missouri introduced it in January and, you know, Mr. Rogers has been such a proponent of this and we are with him on it. We see great utility and it can only help the problem as we go forward.

Mr. HARRIS. Thank you very much, and thanks again for the job you do.

STATE DRUG POLICIES

Mr. WOLF. Well, I appreciate Dr. Harris' comments, and I had a thousand questions based on his comments, and then Mr. Bonner. So let me put it this way. Is it fair to say—I want to ask you two questions because there will be an amendment to legalize marijuana on the floor when this bill comes up, guaranteed. Could you say then that in a State that legalizes marijuana—Washington State, Colorado—some of that marijuana will be supplied by Mexican drug cartels when that time comes?

Ms. LEONHART. Well, a lot will depend on what the different States' law says, but let's take the States that have already passed medical marijuana, okay?

Mr. WOLF. Right.

Ms. LEONHART. We see an influence of Mexican marijuana, especially out west with the dispensaries. A lot of people are saying, well, let's experiment with this. We don't need to experiment with it, we know what happened with medical marijuana in these States. Use grew, use grew overnight. I was a special agent in charge in Los Angeles. Overnight dispensaries opened up, more dispensaries than Starbucks, and it has gotten to the point it's so out of hand that cities and municipalities in Southern California are banning dispensaries coming to their areas because they saw what happened, they saw the influence of more crime in that area. You know, face it, do a little surveillance like we do on some of these dispensaries and you'll see that the primary patients of the dispensary are males from ages 18 to 26 and there's a lot of apparent sick people out there.

So we are concerned about—we already know the experiment, we already saw. The Netherlands is a perfect example. You know, they went to the coffee shops and all of that and they're trying to put the genie back in the bottle. Didn't work for them.

Mr. WOLF. So the answer is yes, some of the marijuana in cases like that where it's legalized will be from the Mexican cartels who have been involved in pretty heinous crimes whereby peoples lives were taken.

The other question that I want to ask you then if you can just educate—and I see our good friends from C-SPAN are here—if you would tell what you would say to a mom or a dad or maybe a governor or State legislator or a Member of Congress, what is the problem with marijuana? If they were to say to you, Administrator, there's really not a problem, they've just legalized it in Colorado—tell us, tell us as parents, as a grandfather of 16, tell us, tell Mr. and Mrs. America who are listening to you what is the problem of marijuana.

Ms. LEONHART. Talking to a parent I would say they're going to listen to what your message is. And so as a parent your message needs to be that you need to talk to them about drugs.

Mr. WOLF. But why, why?

Ms. LEONHART. And what you can do is you can tell them marijuana is the most prevalent drug that teens use, marijuana has shown—this latest study that I'm so concerned about is a marijuana user that starts at about age 13, by the time that they're, I think, in their twenties they've been testing to show about an 8 percent drop in IQ.

Mr. WOLF. Eight percent drop in IQ.

Ms. LEONHART. I don't know any other drug that has shown a study like that.

Mr. WOLF. Can you show us that study, that we can submit put it in the record?

Ms. LEONHART. Yes, be glad to give you that one.

[The information follows:]

Marijuana: IQ

Memory, speed of thinking and other cognitive abilities get worse over time with marijuana use

Published on March 15, 2006 at 4:15 AM

Memory, speed of thinking and other cognitive abilities get worse over time with marijuana use, according to a new study published in the March 14, 2006, issue of Neurology, the scientific journal of the American Academy of Neurology.

The study found that frequent marijuana users performed worse than non-users on tests of cognitive abilities, including divided attention (ability to pay attention to more than one stimulus at a time) and verbal fluency (number of words generated within a time limit). Those who had used marijuana for 10 years or more had more problems with their thinking abilities than those who had used marijuana for five to 10 years. All of the marijuana users were heavy users, which was defined as smoking four or more joints per week. "We found that the longer people used marijuana, the more deterioration they had in these cognitive abilities, especially in the ability to learn and remember new information," said study author Lambros Messinis, PhD, of the Department of Neurology of the University Hospital of Patras in Patras, Greece. "In several areas, their abilities were significant enough to be considered impaired, with more impairment in the longer-term users than the shorter-term users."

The study involved people ages 17 to 49 taking part in a drug abuse treatment program in Athens, Greece. There were 20 long-term users, 20 shorter-term users and 24 control subjects who had used marijuana at least once in their lives but not more than 20 times and not in the past two years. Those who had used any other class of drugs, such as cocaine or stimulants, during the past year or for more than three months throughout their lives were not included in the study. Before the tests were performed, all participants had to abstain from marijuana for at least 24 hours.

The marijuana users performed worse in several cognitive domains, including delayed recall, recognition and executive functions of the brain. For example, on a test measuring the ability to make decisions, long-term users had 70 percent impaired performance, compared to 55 percent impaired performance for shorter-term users and 8 percent impaired performance for non-users. In a test where participants needed to remember a list of words that had been read to them earlier, the non-users remembered an average of 12 out of 15 words, the shorter-term users remembered an average of nine words and the long-term users remembered an average of seven words.

SOURCE: American Academy of Neurology http://www.aan.com

STUDY ABSTRACT

Background: Although about 7 million people in the US population use marijuana at least weekly, there is a paucity of scientific data on persistent neurocognitive effects of marijuana

use.

Objective: To determine if neurocognitive deficits persist in 28-day abstinent heavy marijuana users and if these deficits are dose-related to the number of marijuana joints smoked per week.

Methods: A battery of neurocognitive tests was given to 28-day abstinent heavy marijuana abusers.

Results: As joints smoked per week increased, performance decreased on tests measuring memory, executive functioning, psychomotor speed, and manual dexterity. When dividing the group into light, middle, and heavy user groups, the heavy group performed significantly below the light group on 5 of 35 measures and the size of the effect ranged from 3.00 to 4.20 SD units. Duration of use had little effect on neurocognitive performance.

Conclusions: Very heavy use of marijuana is associated with persistent decrements in neurocognitive performance even after 28 days of abstinence. It is unclear if these decrements will resolve with continued abstinence or become progressively worse with continued heavy marijuana use.

Received May 6, 2002.

Accepted July 11, 2002.

SOURCE: "Dose-related neurocognitive effects of marijuana use" K.I. Bolla, PhD, K. Brown, MPH, D. Eldreth, BA, K. Tate, BA and J.L. Cadet, MD Neurology November 12, 2002 vol. 59 no. 9 1337-1343;
http://www.neurology.org/content/59/9/1337.short?sid=1f8c89ff-29e2-4df0-8360-1eebb0b8f9f0

Marijuana's Lasting Effects on the Brain

March 2013

UPDATE - March 21, 2013 A study (External link, please review our disclaimer) was published in January 2013 contesting the interpretation of the large-scale marijuana study (External link, please review our disclaimer). I discuss below that heavy cannabis use begun in the teen years and continued into adulthood brings about declines in IQ scores. The contesting author used simulation models to suggest that other factors, such as socioeconomic status, may account for the downward IQ trend the original authors reported. In a rebuttal letter published in the March 4, 2013 issue of PNAS, the authors of the first study note that SES could not account for the findings they observed, because adolescent cannabis use was not more prevalent in populations with lower SES. (The complete PNAS letter can be read here (External link, please review our disclaimer); an extract can be read here (External link, please review our disclaimer).

Observational studies in humans cannot account for all potentially confounding variables when addressing change in a complex trait like IQ, and future studies will be needed to further clarify exactly how much intelligence may be lost as a result of adolescent marijuana use. That such a loss does occur, however, is consistent with what we know from animal studies. Though limited in their application to the complex human brain, such studies can more definitively assess the relationship between drug exposure and various outcomes. They have shown that exposure to cannabinoids during adolescent development can cause long-lasting changes in the brain's reward system as well as the hippocampus, a brain area critical for learning and memory.

The message inherent in these and in multiple supporting studies is clear. Regular marijuana use in adolescence is part of a cluster of behaviors that can produce enduring detrimental effects and alter the trajectory of a young person's life thwarting his or her potential. Beyond potentially lowering IQ, teen marijuana use is linked to school dropout, other drug use, mental health problems, etc. Given the current number of regular marijuana users (about 1 in 15 high school seniors) and the possibility of this number increasing with marijuana legalization, we cannot afford to divert our focus from the central point: Regular marijuana use stands to jeopardize a young person's chances of succession in school and in life.

September 10, 2012 - We repeatedly hear the myth that marijuana is a benign drug that it is not addictive (which it is) or that it does not pose a threat to the user's health or brain (which it does). A major new study published last week in Proceedings of the National Academy of Sciences (and funded partly by NIDA and other NIH institutes) provides objective evidence that, at least for adolescents, marijuana is harmful to the brain.

The new research is part of a large-scale study of health and development conducted in New Zealand. Researchers administered IQ tests to over 1,000 individuals at age 13 (born in 1972 and 1973) and assessed their patterns of cannabis use at several points as they aged. Participants were again tested for IQ at age 38, and their two scores were compared as a function of their marijuana use. The results were striking: Participants who used cannabis heavily in their teens and continued through adulthood showed a significant drop in IQ between the ages of 13 and 38an average of 8 points for those who met criteria for cannabis dependence. (For context, a loss of 8 IQ points could drop a person of average intelligence into the lowest third of the intelligence range.) Those who started using marijuana regularly or heavily after age 18 showed minor declines. By comparison, those who never used marijuana showed no declines in IQ.

Other studies have shown a link between prolonged marijuana use and cognitive or neural impairment. A recent report in Brain, for example, reveals neural-connectivity impairment in some brain regions following prolonged cannabis use initiated in adolescence or young adulthood. But the New Zealand study is the first prospective study to test young people before their first use of marijuana and again after long-term use (as much as 20+ years later). Indeed, the ruling out of a pre-existing difference in IQ makes the study particularly valuable. Also, and strikingly, those who used marijuana heavily before age 18 showed mental decline

even after they quit taking the drug. This finding is consistent with the notion that drug use during adolescence when the brain is still rewiring, pruning, and organizing itself can have negative and long-lasting effects on the brain.

While this study cannot exclude all potential contributory factors (e.g., child abuse, subclinical mental illness, mild learning disabilities), the neuropsychological declines following marijuana use were present even after researchers controlled for factors like years of education, mental illness, and use of other substances. Mental impairment was evident not just in test scores but in users' daily functioning. People who knew the study participants (e.g., friends and relatives) filled out questionnaires and reported that persistent cannabis users had significantly more memory and attention problems: easily getting distracted, misplacing things, forgetting to keep appointments or return calls, and so on.

Unfortunately, the proportion of American teens who believe marijuana use is harmful has been declining for the past several years, which has corresponded to a steady rise in their use of the drug, as shown by NIDA's annual Monitoring the Future survey of 8th, 10th, and 12th graders. Since it decreases IQ, regular marijuana use stands to jeopardize a young person's chances of success in school. So as another school year begins, we all must step up our efforts to educate teens about the harms of marijuana so that we can realign their perceptions of this drug with the scientific evidence.

SOURCE: National Institute on Drug Abuse

www.drugabuse.gov/about-nida/directors-page/messages-director/2013/03/marijuanas-lasting-effects-brain.

Cannabis increases risk of psychosis in teens

Teenage cannabis users are more likely to suffer psychotic symptoms and have a greater risk of developing schizophrenia in later life, research has found.

By Laura Clout

12:10AM BST 02 Jun 2008

Among more than 6,000 youngsters interviewed for the largest study of its kind, users of the drug had a higher average number of symptoms associated with a risk of psychosis.

These included feeling like something strange or inexplicable was taking place, suspecting they were being influenced or followed and difficulty in controlling the speed of thoughts.

Researchers also found that those who took cannabis in adolescence had a greater risk of developing schizophrenia than older users of the drug.

The teenagers, aged 15 and 16, were asked about their drug use before their risk of developing a psychotic disorder was assessed by experts.

More than 5 per cent said they had used cannabis once or more, and one in 100 had used cannabis more than five times. Girls were more likely to take the drug than boys.

The study, carried out by a team at the University of Oulu in Finland, is published on Monday in the British Journal of Psychiatry.

Dr Jouko Miettunen, who led the research said: "These teenagers are likely to be vulnerable to the mental effects, which mean they are probably vulnerable to developing psychosis at some point."

SOURCE:

http://www.telegraph.co.uk/news/uknews/2063199/Cannabis-increases-risk-of psychosis-in-teens.html

Ms. LEONHART. I'm worried about some figures from Colorado just since medical marijuana became legal there. The increases in car accidents and fatal car accidents. I have got some figures I could give you on that.

[The information follows:]

Marijuana: Car Accidents

Hazy Logic: Liberty Mutual Insurance/SADD Study Finds Driving Under the Influence of Marijuana a Greater Threat to Teen Drivers Than Alcohol

Amid Growing Acceptance, Nearly One-In-Five Teens Have Gotten Behind the Wheel After Smoking Marijuana

BOSTON, Feb. 22, 2012 /PRNewswire/ -- Marijuana use is on the rise among teens and is currently at its highest level among eighth- to-12th-graders in 30 years. (1) Perhaps equally disturbing is that one-in-five (19 percent) teen driver's reports that they have driven under the influence of marijuana, according to the most recent teen driving study by Liberty Mutual Insurance and SADD (Students Against Destructive Decisions). In fact, marijuana influence is significantly more prevalent among teen drivers than alcohol, as compared to the 13 percent of teens surveyed who report that they have driven after drinking.

The study, which Liberty Mutual and SADD have regularly conducted since 2000, highlights a dangerous misconception: many teens don't even consider marijuana use as a distraction to their driving. More than one-third (36 percent) of teens who have driven after using marijuana say the drug presents no distraction to their driving. Also alarming, among the teens who say they have driven after drinking, 19 percent of them believe alcohol use does not present a driving distraction.

"Marijuana affects memory, judgment, and perception and can lead to poor decisions when a teen under the influence of this or other drugs gets behind the wheel of a car," said Stephen Wallace, Senior Advisor for Policy, Research, and Education at SADD. "What keeps me up at night is that this data reflects a dangerous trend toward the acceptance of marijuana and other substances compared to our study of teens conducted just two years ago."

Indeed, in a prior Liberty Mutual Insurance/SADD study in 2009, 78 percent of teens were at the other end of the spectrum, characterizing marijuana use as "very" or "extremely" distracting to their driving. However, in the most recent study two years later, the percentage of teens who felt this high level of concern declined to 70 percent.

"Teens are faced with potentially destructive decisions every day and don't always make the best ones," said Dave Melton, a driving safety expert with Liberty Mutual Insurance and managing director of global safety. "It's our job as mentors, parents, role models or friends to effectively communicate with them to ensure they are armed with the right information and aware of the dangers of marijuana and other substances, especially while driving."

Power of the Passenger. Friends do play a significant role, as most teen drivers say they would stop driving under the influence of marijuana (90 percent) or alcohol (94 percent) if asked by their passengers. Yet even teen passengers are seemingly less concerned about riding in a car with a driver who has used marijuana than with one who has used alcohol. While a significant majority (87 percent) of teen passengers would speak up and ask the driver to refrain from getting behind the wheel after drinking; only 72 percent of teen

passengers would do the same for a driver who has used marijuana. Girls are far more likely to speak up to the driver than boys are in either circumstance.

Liberty Mutual Insurance and SADD have been working together since 1991 to help empower parents and teens to communicate openly about the critical issues young people face every day. Helpful information on how to effectively communicate, including tips on how to be a safe and responsible driver, can be found at www.LibertyMutual.com/TeenDriving. The website also provides guidelines from SADD and Liberty Mutual on how to have good family communication, information about distracted driving, state-by-state teen driving laws, practice permit tests, and video demonstrations of safe driving techniques including parallel parking. Other important safety information can be found at www.sadd.org.

About the Study. Liberty Mutual Insurance and SADD commissioned ORC International to conduct a qualitative and quantitative study to measure teen driving attitudes and behaviors. The study was initiated with a series of four focus groups held in Harrisburg, Pa., and San Francisco, Calif., in October 2010, followed by a survey of 2,294 teens in eleventh and twelfth grades from 28 recruited high schools across the country in January 2011. Overall findings for the study can be interpreted with a 95 percent confidence interval with an error margin of +/- 2.02 percent.

About Liberty Mutual Insurance. "Helping people live safer, more secure lives" since 1912, Boston-based Liberty Mutual Insurance is a diversified global insurer and the third largest property and casualty insurer in the U.S. based on A.M. Best Company's report of 2010 net written premium. Liberty Mutual Insurance also ranks 82nd on the *Fortune* 500 list of largest U.S. corporations, based on 2010 revenue. The company has over 45,000 employees located in more than 900 offices throughout the world.

The eighth-largest auto and home insurer in the U.S., Liberty Mutual Insurance (libertymutual.com) sells full lines of coverage for automobile, homeowners, valuable possessions, personal liability, and individual life insurance. The company is an industry leader in affinity partnerships, offering car and home insurance to employees and members of more than 13,500 companies, credit unions, professional associations and alumni groups.

About SADD. SADD, the nation's leading peer-to-peer youth education, prevention, and activism organization is committed to empowering young people to lead initiatives in their schools and communities. Founded in 1981, today SADD has thousands of chapters in middle schools, high schools, and colleges. SADD highlights prevention of many destructive behaviors and attitudes that are harmful to young people, including underage drinking, other drug use, risky and impaired driving, and teen violence and suicide. To become a Friend of SADD or for more information, visit sadd.org, parentteenmatters.org or follow SADD on Facebook, Twitter and YouTube.

SOURCE: Students Against Drunk Driving: "Hazy logic: Liberty Mutual Insurance/SADD Study Finds Driving Under the Influence of Marijuana a Greater Threat to Teen Drivers than Alcohol" (2/22/2012)
http://sadd.org/press/presspdfs/Marijuana%20Teen%20Release.pdf

Mr. WOLF. There will be an increase in car accidents and fatal car accidents?

Ms. LEONHART. Increase in car accidents has got to be a major concern. In fact a driver who has used marijuana is twice as likely to have a crash than someone that didn't. There are a lot of statistics out there because people have looked at the science, and the science tells us that marijuana belongs in Schedule I because its high potential for abuse. More teens enter drug treatment for marijuana addiction than other illegal drugs and alcohol. It's a fact. There has been no recognized medical use and treatment in the U.S., and that's been determined by the FDA, on research that's been done. And there's a lack of accepted safety protocols for use of the drug even under medical supervision.

The reason why we're worried about this with young people is there is also a connection between schizophrenia, psychosis, and the young marijuana user. They have studies now, we didn't have these studies 10 years ago, but they have studies, they looked at the science, and this is a dangerous drug. And the message that the kids are going to get in social media, the message that kids are going to get on television, on the radio, in their songs, with their peers is that it's a harmless drug. So as parents, the parents need to say, here are the facts or here is where you can go to get the facts.

Mr. WOLF. Is it a gateway drug? Is there a connection between using this and going on or——

Ms. LEONHART. There is absolutely a connection between marijuana use, especially early marijuana use. Now they even see a connection between marijuana use and the likelihood of the kid being addicted to tobacco, but they also will show these connections between drug use that starts early with marijuana and the moving on to the other drugs. There have been studies for years on that.

Mr. WOLF. I think Dr. Harris is right. The Attorney General is coming up next week. And, Doctor, you know, you might ask him, or if you don't ask him, I'll ask him. I think the Attorney General is really going to have to speak out on this. He cannot pull a Pontius Pilate and wash his hands.

Mr. BONNER. Mr. Chairman?

Mr. WOLF. Yes, Mr. Bonner?

Mr. BONNER. Outstanding question, and I'm not trying to put words in the Administrator's mouth. She said this is a dangerous drug, but it's also an illegal drug.

Ms. LEONHART. That's correct.

Mr. BONNER. So it's a dangerous, illegal drug. I think this has been an insightful hearing today.

Mr. WOLF. Yes.

Ms. LEONHART. And I will say, the Attorney General is aware of that. We have been able to give input on the concerns we have. And he is looking at it, he's studying it, he's looking at those legal—the DEA isn't going to look at the legal implications there, but he is. And he has said that they're doing a very good look at it. Both States, what they passed are very different. They're taking the time to look at it and then to figure out a way forward.

Mr. WOLF. It really may require the President of the United States to speak out. The President is the leader of the Nation, he

represents everyone, and it really may get to the point that it would be important for the Attorney General to speak out, but we really may need the President to speak out. He's a good family man, he has a wonderful family. This has been fascinating, as Mr. Bonner said, and I appreciate you kind of taking this, Mr. Bonner. It really may require the President to actually address the Nation and make it very, very clear. He has tremendous moral authority and I think it may get down to that point.

We're going to go, I want to go to Mr. Fattah, though.

DEA AGENT PAY

Mr. FATTAH. Yeah, if I could just try to get a couple of things here on the record. And I want to get to this marijuana thing in a second. But the agents, about 5,000, what is the average pay for these agents?

Ms. LEONHART. It depends. Their starting pay, and then, depending on how many years they're on. So——

Mr. FATTAH. What do they start at? I mean, to go risk my life in some dark alley somewhere on behalf of my country, what are paying me to do that?

Ms. LEONHART. I would say that they probably start at about $50,000 to $70,000. $50,000 to $70,000 maybe.

Mr. FATTAH. Okay.

Ms. LEONHART. We can get you those numbers.

[The information follows:]

AGENT SALARY

Entry level of pay for a new DEA Special Agent is a typically at a GS–7 or GS–9 level. The Special Agent journeyman level would be around a GS–13/5.

Mr. WOLF. If the gentleman would yield. And the Congress, ill advised that it is, has frozen the pay for 3 consecutive years. Is that correct?

Ms. LEONHART. That's correct.

Mr. FATTAH. Right. Because there is a notion that we need to have smaller government, Federal employees are paid too much money. I'm just trying to make sure I follow. Now, you started out as a special agent in charge in LA, and you've also worked in foreign countries. Is that correct?

Ms. LEONHART. I have not had a foreign assignment.

Mr. FATTAH. Right.

Ms. LEONHART. But I've been the Special Agent in Charge in San Francisco and in Los Angeles.

Mr. FATTAH. Okay. So are you having attrition issues or losing agents to other positions because of the pay freeze?

Ms. LEONHART. I think at DEA we're having the same problems that the other law enforcement agencies are seeing, and that's that with their agents that meet minimum—hit the retirement age, because law enforcement retirement is a little bit different.

Mr. FATTAH. Yes.

Ms. LEONHART. That in the past agents would stay until they were mandatory, which was age 57. But I think they're now making decisions to not stay once they hit minimum mandatory age, which is usually around age 50. And right now you know what's the incentive, they're having kids now get into college.

Mr. FATTAH. So you've been at this for 3 decades, right? If we were trying to protect our Nation against all these drugs and all the drug cartels and all of this, how much would we need to invest? Is the $3 billion that you're spending what we need to invest or is that like, you know, just a kind finger in the dike, you know, the hole in the wall here.

Ms. LEONHART. Because I have seen years with DEA and with my State and local partners where we have made such a difference I would say continue, you know, not taking anything away and continue to support the budget that's been put forward.

Mr. FATTAH. So you believe this budget is adequate if it were approved to protect our country on the drug front.

Ms. LEONHART. We could always do more with more resources.

Mr. FATTAH. Okay.

Ms. LEONHART. But in these tough times and because we want to do our part and we know there's tough decisions to make.

DEA PRIORITIES

Mr. FATTAH. And so within these decisions you also are making budgetary choices, right? So if more Americans are dying from prescription drug abuse like OxyContin, you're putting more emphasis there?

Ms. LEONHART. And that's what we did.

Mr. FATTAH. And you're putting less emphasis in other places, right?

Ms. LEONHART. Well, what we've found a way to do is, as prescription drug abuse exploded, we found a way to retool our workforce and retrain our workforce and bring more law enforcement——

Mr. FATTAH. I'm trying to get at the marijuana issue here now. I'm trying to understand your priorities.

Ms. LEONHART. Okay.

Mr. FATTAH. So in terms of drugs, all of which that are being illegally used, right, you're responsible to protect the country from, and I'm trying to figure out where you're putting your priorities at and where marijuana falls in that category.

Ms. LEONHART. The reason—the way drug trafficking works now you can't really prioritize a drug because these cartels, as I talked about——

Mr. FATTAH. These are polydrug groups.

Ms. LEONHART. These are polydrug groups. So you can't say you're going to put all your money in cocaine, you're going to put all your money in marijuana. You can't do that. So what we do is we're an organization that is focused on identifying and targeting——

Mr. FATTAH. Anybody who is doing something illegal.

Ms. LEONHART. We're targeting the organizations that have the biggest impact on the country. So we go after the biggest and the baddest. And the poster that we have up there and that was passed to you, we identified, we found the best way for us to make an impact——

Mr. FATTAH. Is to go after the group.

Ms. LEONHART [continuing]. Is to go after the biggest and the baddest and the ones that are most impacting our communities and our country.

Mr. FATTAH. Okay. So now we've got to wrap up because at some point we have to go. So you serve at the pleasure of the President?

Ms. LEONHART. Yes, I do.

Mr. FATTAH. The President's position—you've articulated the administration's position about the fact that you are still enforcing Federal law in terms of marijuana, right?

Ms. LEONHART. We're sworn to uphold Federal law and we're going to continue to do that.

Mr. FATTAH. So there's no separation between you and the administration. You are the administration, right, in this matter.

Ms. LEONHART. We're the drug enforcement people and no one's told us not to enforce the law.

Mr. FATTAH. I just want to make sure we don't have any politics slipping in here. Now, Dr. Harris says that in his State they allow medical use of marijuana through academic medical institutions. And there's medical use of other drugs that you enforce the law around, too, right, the cocaine, other drugs, they use OxyContin, used for medical purposes. Is there a medical purpose for marijuana?

Ms. LEONHART. The FDA has not found a medical purpose for marijuana. And in fact——

Mr. FATTAH. And on what basis did the States find it that differentiate? Maybe Dr. Harris——

Mr. HARRIS. Yes, if you would yield just for a second.

Mr. FATTAH. I'll be glad to.

Mr. HARRIS. This is an important distinction because—and, again, when I was in state legislation, this is the point I made, if you're going to, quote, "legalize it," so you put in it in the State law——

Mr. FATTAH. Decriminalize it, right?

Mr. HARRIS. Well, they did that, too, they did that, too. But if you're going to make it available under the auspices of a State sanction, because decriminalization is different, you're saying, look, it's against the law but we're just not going to enforce it basically. So my point was, you should do it under a medical protocol that attempts to answer the question, does it have a use?

Mr. FATTAH. Right.

Mr. HARRIS. And Maryland, I think, and correct me, I think it's the only State in the Nation that's taken that route, that it only can be under an approved protocol in academic medical center that seeks to answer the question, is it useful? And I don't know enough about the Schedule I. I would assume that gets it a little more legal under Federal law because it's all under research protocol in an academic. Although, again, and I appreciate you say you go for the big guys, but, you know, anyone growing marijuana in a State where it's legal is breaking Federal law under the DEA classification.

Mr. FATTAH. We don't have——

Mr. HARRIS. Thank you very much for yielding the time.

Ms. LEONHART. That's why it comes back to resources.

Mr. FATTAH. Don't lock them all up because we don't have room for them all.

But the last thing I want to say is that one of the experiences that I think is guiding a lot of people in this regard is the experience the country went through with prohibition, right, and this is compared—this is brought up a lot around dinner tables, is that we tried to prohibit the use of alcohol, right? And it occasioned in many respects in a lot of people's minds the advent of a lot of these organized criminal enterprises in which people were being shot down, you know, in cities like Chicago and other places a long time ago. And so the question becomes where there we're going to differentiate between saying that jaywalking is illegal in Washington, D.C., and trying to actually take every person who walks across the street not at the time that they should and actually, you know, criminalize it in some form. You know, there is a balancing act that a government has to make. So there a philosophical debate, but there's also a practical debate.

But I appreciate all that you're doing, the fact that you're risking your life on behalf of our country and all that work for you, and we're going to do everything we can to support your budget and the President's budget request in this regard.

Thank you, Mr. Chairman.

PRISON POPULATION

Mr. WOLF. Thank you, Mr. Fattah.

I agree with the comment that Mr. Fattah made earlier, too, on the demand side. And of the people—maybe this is really for the hearing next week—of the people who serve in prison, Federal but also State and local, how many who are in there because of drugs, how many are guaranteed rehabilitation? And I understand many are in there for not just use. But does everyone in the Federal prison system get to go into a drug rehab program who is involved with drugs?

Ms. LEONHART. I think you've pointed out one of the weaknesses when I've said that the drug control strategy is a more balanced approach than we've probably ever had. One of the places we need to look is what are we doing to offer treatment to people while they're incarcerated, there is no better time to do that. They're going to be coming out of prison at some point.

So we're not the agency to look at that, but I agree completely that that is a weak area. But I will also say remember that in State prisons where more prisoners than Federal prison, 0.3 percent, 0.3 percent of inmates in State prisons are there for marijuana possession.

Mr. WOLF. Right.

Ms. LEONHART. They're there for trafficking.

Mr. WOLF. Well, Mr. Fattah and I are putting in a bill to create a national commission to look at reforming the prisons. We're going to name it after Chuck Colson, who was head of Prison Fellowship. But I think this is one of the things we want to look at. And that's a pretty startling number. I thought it would have been higher. But that anyone who is in prison, you have a captive audience at that time, there ought to be a mandatory drug rehabilitation and

there ought to be making sure, though, that they can participate. And I understand there are certain areas that they're not able to.

Mr. FATTAH. I don't mean to play defense attorney here because I'm not even an attorney, but in some cases you can have someone who is addicted to, say, crack cocaine or some other substance and they are trafficking to feed their own habit, but they're not leading a cartel. So there is difference, there is a distinction. And so inside these statistics you have to get to where the——

Mr. WOLF. And it doesn't matter what the numbers, if they're trafficking and they're addicted, they ought to be forced to go into it. I believe every prisoner should have mandatory drug rehabilitation if they're addicted, every prisoner. Every prisoner ought to work, work is dignity. You cannot put a man or woman in prison for 15 years and give them no work. Our prisoners are walking around, they're not even picking up butts because sometimes people aren't smoking as much as they used to smoke. Prisoners are just hanging. You go into prisons and they're hanging around maybe making license plates.

And so part of the problem has been this Congress, this Congress has destroyed the prison industry system. And so we want to have a program to have men and women in prison work with dignity, perhaps keep a portion that they can have when they get out, a portion of their income they can give to their families, and a portion that they could have for restitution to the person who they committed the crime against.

And so I think the combination of rehabilitation when you have them, but with dignity. Also to give a man or woman the skill. I saw that the Border Patrol uniforms are all made in Mexico. Why couldn't we make the Border Patrol uniforms in U.S. Federal prisons? You're not competing with an American manufacturer. And what we're asking is all of these products that are no longer made in the United States, there is only one or two baseball cap manufacturers left in the United States. And I'm not going to ask you about DEA's caps—I would ask you but you might just submit it for the record—where are the DEA caps made? If anyone knows.

Mr. FATTAH. Don't answer that question, though.

Mr. WOLF. Well, I think I've got to ask it now. I want to know where are the DEA caps made?

Ms. LEONHART. We will make note of——

Mr. WOLF. And where are the Bureau of Prison caps made and where are the Park Service caps made? I visited Yosemite National Park, I took my wife there last year, everything there was made in China. Well, why couldn't you have all the baseball caps all made by American prisoners that would give them the dignity and so we're not competing with an American manufacturer, we're competing with a manufacturer in some other foreign company. But that's another issue, and Mr. Fattah and I are going to deal with this. But I do want to know where are the DEA baseball caps, where are your T-shirts made, and where are your uniforms? If you could supply it for the record.

[The information follows:]

DEA CLOTHING

The majority of clothing issued by DEA is issued through the DEA Office of Training (TR) when special agents and other personnel receive their basic training. DEA is mandated to purchase clothing through the General Services Administration (GSA). Where or what countries GSA contracts with to manufacture their products often vary. In some cases, GSA does not offer clothing that meets DEA specifications and performance requirements. In these cases, the product or piece of clothing is procured via the "Open Market" through U.S. based companies. If the product is purchased through a U.S. based company, TR might not know who or what country manufactures that product. Regardless if the product is purchased through GSA or through "open market", items are manufactured in multiple countries.

A review of the current stock within TR's warehouse reveals the following items of clothing and country of manufacture:

Clothing item	Country of Manufacture
Standard issue tactical pants	United States
Hats	Philippines
Physical training gear	Honduras
Physical training gear	Nicaragua
Belts	China
Raid Jackets	Vietnam

Mr. FATTAH. I just want one of the caps.

Ms. LEONHART. I will tell you that there is a freeze on any caps, trinkets, T-shirts.

Mr. WOLF. But, I mean, in the past, though. Where had they been made before the freeze?

PAINKILLER TECHNOLOGIES

As you know, Mr. Rogers has been intensely involved in efforts to ensure that painkillers incorporate abuse-deterrent technologies. I've testified side by side with him and pressed the FDA on this. The FDA should not allow the original crushable formulations of powerful opioids to reenter the market when there are technologies available to deter use, and we think that the FDA has the authority now to keep this from happening.

But to make things crystal clear, we're sponsoring, along with Mr. Aderholt and Mr. Rooney, bipartisan legislation from Mr. Keating to achieve this goal.

Next Tuesday is a critical deadline for the FDA to make a determination about whether the United States should permit generic pharmaceutical companies to manufacture painkillers without the abuse-deterrent technologies that prevent crushing. When these drugs were approved in Canada just a few months ago, ONDCP Director Gil Kerlikowske issued an alert to border security personnel and law enforcement warning them of the potential for diversion across the northern border. So clearly, as Mr. Rogers said, there is some concern with a similar uptick in diversion should it occur here in the USA.

If the FDA does not take action to prevent these crushable drugs from coming to market, what trends does DEA anticipate regarding diversion of these prescription pills?

Ms. LEONHART. Well, I think I agree with Mr. Kerlikowske that there would be a shift and we need to be concerned about what would happen.

Mr. WOLF. Could you transfer that information and call the FDA and tell them that you've been asked to call by the committee, just to let them know of your information?

Ms. LEONHART. We will talk to them, yes. I'm sure we've probably already done that, but I will check.

Mr. WOLF. Does DEA's budget prepare for any anticipated uptick in drugs diversion that could result from the reintroduction of crushable pain pills into the U.S. market?

Ms. LEONHART. Well, we're always concerned about new drugs on the market or drugs that have greater ability to be abused. So without going down the road of finding these tamper-resistant and mandating tamper-resistant, the alternative is going to be more diversion.

Mr. WOLF. In January the FDA issued draft guidance for drug companies making opioid painkillers regarding formulations to deter abuse. The guidance outlines the studies drugmakers should conduct to demonstrate abuse deterrence, but didn't address generic formulations. Is DEA able to comment on the FDA's proposed guidance?

Ms. LEONHART. Well, we would support going further to look at the generics. I think any move in that direction needs to include generics.

Mr. WOLF. I think you have to quickly call them then.

Ms. LEONHART. I believe——

Mr. WOLF. You probably have.

Ms. LEONHART. I believe we've given it, but I will check.

Mr. WOLF. But I think to hear it from you, I think, with your credibility, and particularly I appreciate the fact that you're career and yet you worked your way up. So I think your credibility would be very important.

HYDROCODONE

DEA and HHS have been engaged unsuccessfully for over a decade in the interagency process required by the Controlled Substance Act to reschedule hydrocodone products. DEA has supported this rescheduling since 1994. Chairman Rogers and I are both cosponsoring bipartisan legislation offered by Mr. Buchanan to reclassify hydrocodone from a Schedule III drug to a more tightly controlled Schedule II so that it will be classified in the manner of other opioid painkillers, such as OxyContin. We're asking this question, why do you support such a rescheduling?

Ms. LEONHART. Well, while I can't talk about any specific legislation I can say that DEA has felt strongly about that since 1999. And we support the findings of a committee that I believe met in January or February earlier this year—January 25th—and their recommendation was that hydrocodone should be moved to Schedule II. We support that and have supported that. We have voiced our opinion to the FDA.

Mr. WOLF. The other question Mr. Rogers wanted to ask, DEA seized 45,000 hydrocodone combo pills in 2010. Put this in perspective for us.

Ms. LEONHART. Forty-five thousand combination pills, a very, very harmful drug in the wrong hands. That contributes to the addiction problem we have in the country. I immediately would be

worried; 45,000 combination pills, I am betting that a lot of them were distributed or received at pain clinics. I'm worried about the end result, the user becoming addicted to opioids and later turning to street heroin. Forty-five thousand combination pills is a lot and is one of the reasons why we have supported Schedule II for the combination pills.

Mr. WOLF. And if you seized 45,000, that means a lot you didn't seize.

Ms. LEONHART. Absolutely.

Mr. WOLF. In January the FDA advisory committee took another look at this issue and actually voted 19–10 and supported a change in hydrocodone products to Schedule II, which would mean tighter prescription guidelines. If FDA adopts these recommendations what will the process be for moving forward with the implementation of these changes? And will this change positively impact DEA's operations?

Ms. LEONHART. We have felt strongly that if the combination products are moved to Schedule II, that that will prevent diversion, prevent a lot of addiction, will make an immediate impact. If FDA does move in that direction then we will make sure at DEA that we move light speed to make that happen.

Mr. WOLF. I was shocked that 10 people there voted the other way. If you were hired as the defense attorney for the 10, what's the best argument they can make for being against this?

Ms. LEONHART. It's clear that it's dangerous and it belongs in that schedule, but I wasn't there so I don't know what their reasoning would be.

Mr. WOLF. Mr. Rogers and I went out and testified at an FDA event and we found that the number of people on the panel were all connected to drug companies, too.

COCAINE

On March 19, current former commanders of the U.S. Southern Command testified that sequestration could dramatically reduce the ability of the Coast Guard, Navy, Customs and Border Protection, and others to detect and interdict trafficking in the source and transit zones of the Caribbean, Atlantic, and Eastern Pacific. Instead, 150 to 200 more tons of cocaine per year could make it to the U.S. Increase burdens on domestic law enforcement. What is your reaction to this possibility? Have you heard those numbers? What impact would that have on your operations?

Ms. LEONHART. We've been very concerned about that. We have been working with the interagency to raise the issue about if there are not the assets out there to move to interdict, especially drug loads that we have verified, we're getting so much better at getting source information, you know, being able to pinpoint a load, and now facing not having an asset to go pick it up is very disturbing. And the whole interagency is concerned about the lack of assets. That would definitely have an impact on the amount of drugs that enter our country.

Mr. WOLF. Venezuela has been a problem both in diplomatic and law enforcement cooperation. How would you describe the challenges presented by Venezuela to a coordinated regional drug enforcement strategy? And how much volume of trafficking passes

through Venezuela? And is there evidence that the government there is facilitating it? Venezuela has established a national anti-drug office, but I understand it does not work with DEA.

Ms. LEONHART. Well, I would say we have been concerned about Venezuela for quite some time, it continues to be a major drug transshipment country.

Mr. WOLF. And we don't have an ambassador down there currently, at the current time, do we?

Ms. LEONHART. The ambassador I don't believe was ever reinstated. I believe that the ambassador was——

Mr. WOLF. How are DEA agents down there?

[The information follows:]

VENEZUELA

DEA has four positions in Venezuela: three Special Agents, including one Special Agent Country Attach, and one administrative support position. As of April 6, 2013, three are onboard: one Country Attach, one Special Agent, and one administrative support position.

Ms. LEONHART. We have been able to maintain DEA positions down there and actually have had some cooperation and have been able to achieve some things, being able to remain in Venezuela. We're concerned about Venezuela because Venezuela is where these loads leave that then transit West Africa and that then go up into Europe.

Mr. WOLF. Who operates that cartel? Who is involved in taking Venezuela, Africa and up?

Ms. LEONHART. Again, a lot of the drug loads, they're controlled by South American traffickers. We have even seen some influence of Mexican traffickers or affiliates of Mexican traffickers. They control the loads that are going into West Africa and——

Mr. WOLF. What countries in West Africa?

Ms. LEONHART. I'm sorry?

Mr. WOLF. What countries in West Africa.

Ms. LEONHART. Well, Guinea-Bissau which on the board you see with the arrest we made recently of the former admiral of the Guinea-Bissau Navy, who was protecting drug loads.

Mr. FATTAH. Mr. Chairman, could I ask a quick question?

Mr. WOLF. Sure.

INTERNATIONAL OPERATIONS

Mr. FATTAH. So if I was a Philadelphia—and I only say Philadelphia because it's the best city in the world—person and listening to you and I was wondering why would the United States DEA be concerned, why would we be using our resources dealing with drugs that would be transported from a foreign country to another foreign country and into then a third foreign country or a group of countries in Europe versus being concerned about meth labs, pill mills here, and so forth and so on? I mean, so if you could just put on the record.

Ms. LEONHART. Very good question, and a lot of people ask us why. We have a worldwide presence, over 80 offices in over 60 countries. It's because those organizations that are getting rich off of sending drug loads to West Africa which then go up to Europe and are sold at two and three times what the price is in the United

States, that money is coming back to make those organizations stronger. Those are the same organizations that are also sending drugs to our country. Those are also the same organizations that are helping fund terror and terrorist organizations, and they are all intertwined.

And when you're talking about South American organizations and the use of Guinea-Bissau, the use of these West African countries, that money is coming back to them. Those are the same organizations that we fight to make weaker and weaker and weaker. And some of those drugs now because we've been so successful enforcement-wise, both in the transit zone and domestic enforcement, some of those drugs, that's how they are getting to the U.S. They're now going from Venezuela to West Africa, up to Europe, to then be brought back over.

Mr. FATTAH. Thank you, Mr. Chairman.

And just on the Venezuela front, there has been a lot of political rhetoric between the two countries, the truth is, as you said, the DEA has been able to function there. And in terms of our number one priority for Venezuela, which is the sale of their oil, they have been selling their oil to us and continue to be one of our largest suppliers, through all of the political rhetorical gymnastics of the last two administrations. So the DEA's presence there is a sure sign of cooperation actually at levels between the two countries that are important. Thank you.

Mr. WOLF. We're down to 2 minutes and 58 seconds. So we're going to recess for about 10 to 15 minutes because it was a 5-minute vote and another 5-minute vote. So we'll be back in about maybe noon or 5 after.

Ms. LEONHART. Okay, thank you.

Mr. WOLF. Okay. The hearing is recessed.

[Recess.]

Mr. WOLF. The hearing will resume. I apologize, but the votes come when they come.

PUERTO RICO

Puerto Rico has seen significant increases in criminal violence with a murder rate 6 times that of the rest of U.S. Local law enforcement suggests 75 percent of these are drug related. What is DEA doing with Federal and Puerto Rican partners to address this phenomenon? And is there anything we can do to help Puerto Rico? Is there anything that you can think of that we could be doing that we're not doing.

Ms. LEONHART. Thank you for the question. I recently was in Puerto Rico, primarily to tell our agents and our State and local counterparts that had done these wonderful operations, very dangerous operations in the housing projects, to talk to them about why it was important that we continue to do that. Puerto Rico concerns us, the whole Caribbean concerns us, because as we have success on the Southwest border we knew that we would see a shift, and we believe we've seen the shift from about 5 percent coming out of South America that was going up through the Caribbean, we think that's increased. And there's been more trafficking in Puerto Rico, they have their own addiction problem, but on top of that they are, like, a transshipment country—island, I should say—

for drugs, some which stay there and others that then go up to the United States.

So we have prioritized the Caribbean, finding agents that speak Spanish, trying to keep our numbers up and keep our complement there, giving them special training, using some operational funding to do more, some of the operations that they've asked to do. They've had one success after another over the last 2 years. So the enforcement piece is working.

I think the Caribbean overall, the problem, the addiction problem on the island is very dire. We've prioritized within DEA. If there's something special we can do for Puerto Rico we'll do it.

Ms. LEONHART. But I think they're on the right track. We've met with the U.S. attorney there. We've talked to her about the importance of taking all these cases that we have embarked on. She gives us our assurance that she'll take what we bring her.

I think the stars are lined up within the Federal—with the Federal resources and the State and local resources to actually start having impact with their operations.

Mr. WOLF. Is it having an impact on the average family down there, on neighborhoods? Can you feel it?

Ms. LEONHART. I know that the last couple operations we did were in these housing projects that heroin has become a huge problem for them, and I asked the question about has it always been like this or is it worse? It definitely has gotten worse.

VIRGIN ISLANDS

Mr. WOLF. What about in the Virgin Islands?

Ms. LEONHART. Virgin Islands is the same. I mean, the traffickers have targeted these islands. And you have got also corruption issues within local law enforcement that has caused problems, compromises of investigations. It's just harder for these hard-working, very dedicated officers and agents to do their job.

So we, rest assured, we've prioritized that region. We've done a lot of work with the Dominican Republic. We've done a lot of work to bring the Federal resources in both of those areas together to kind of treat it as a regional issue. And I think that those will all pay off.

PUERTO RICO

Mr. WOLF. Okay. If you can think of some things that we can—is the FBI cooperating with you down there now?

Ms. LEONHART. We're working with the FBI. We're working with ICE and CBP. We're working with the local police department. And I know that they need help. I think that what they're doing, what they have planned to do together is going to show some good impact.

Mr. WOLF. Is this figure accurate, that the murder rate is 6 times that of the rest of the U.S.?

Ms. LEONHART. I have heard that, and in fact we met with the Governor when we were there, and he uses those same figures. So I assume it's correct. I knew it was bad, and I know that they've been crying for help.

LESSONS FROM COLOMBIA

Mr. WOLF. Twenty years ago, we were faced with a Colombia that was a narco state. Today it stands as a staunch ally in the fight against drug trafficking and organized crime. Based on DEA experience, what lessons can we take to make it applicable to other source trafficking countries, including Bolivia?

Ms. LEONHART. You're right, Colombia has become a success story. And we were talking this morning about the fact, in my career as a DEA agent, I never would have thought there would be a day where Colombia would be third of the South American countries for production of cocaine, and that's where they are now after leading for all of those years.

There's a lot that South American countries can learn from Colombia. There is definitely a lot that our Mexican counterparts have taken from Colombia. And I think where the Colombia experience can really help is Central America. The trafficking situation, you know, they have had such success in dismantling those cartels. Now they have been left with these bands of criminals. Mexico can learn a lot from that, staying the course. They have also done a lot to tamp down the violence, and I think that countries that are experiencing that can learn a lot from Colombia.

Mr. WOLF. So if you look at the Colombian model, how much of that is being done in Mexico?

Ms. LEONHART. Well, the former head of the Colombian National Police is a narcotics advisor now to the new Mexican president and has been since he entered office. So I think that is very promising. He can bring to President Peña Nieto a number of recommendations that worked for Colombia.

We also, several years ago, started—we call it the Tripartite Agreement—an agreement to bring Colombia, Mexico, and the United States together twice a year to discuss strategy. Now, actually Colombia and Mexico have shared officers and vetted units. Both those countries are now at the El Paso Intelligence Center. There is a lot of sharing, and they have done a lot of training, both in Mexico and in Central America. And I think those countries will learn a lot from Colombia.

Mr. WOLF. Okay. There was a number of other questions on the Mexican cartels, and I think you've covered that. We'll just submit them for the record.

EL PASO INTELLIGENCE CENTER

The El Paso Intelligence Center, EPIC, was reviewed by the Office of the Inspector General a few years ago which found its products generally useful but proposed more efforts at outreach to share its products with State and local users and to expand its collection and analysis. What actions has DEA taken in response to those recommendations?

Ms. LEONHART. Even before the recommendations came out, before the review was even done, EPIC went through a bit of a restructuring, and the products that they were developing are more balanced so that they're not only useful for the Federal partners, but they're just as useful for State and local partners. We've expanded the way that the——

Mr. WOLF. How many State and local partners are there?

Ms. LEONHART. Well, EPIC is a center that State and locals all over the country plug into.

Mr. WOLF. Plug into.

Ms. LEONHART. Yes.

Mr. WOLF. Are there any State and local people there, too?

Ms. LEONHART. Yes, DPS, Texas Department of Public Safety, has liaisons that are there.

[The information follows:]

EPIC

EPIC has formal agreements with law enforcement agencies from all 50 states plus the District of Columbia, Puerto Rico, and American Samoa. Overall, EPIC has a total of 41,350 vetted users. Of that, 22,374 are from 4,571 different S&L agencies. In addition, the El Paso Police Department, El Paso Sheriff's Office, Texas Department of Public Safety, and Texas Air National Guard have staff currently stationed at EPIC.

Mr. WOLF. Can you rotate other States through as like a 30-day detail to sort of learn?

Ms. LEONHART. We have not done that, but we are actually the board of directors for the El Paso Intelligence Center. We are talking about maybe rotating State and local chiefs or sheriffs onto that, and we can talk about, once we bring them in, we can talk to them about maybe a rotation of their officers.

Mr. WOLF. Who established EPIC? Whose idea was that?

Ms. LEONHART. The DEA established EPIC right after the DEA became the DEA 40 years ago.

Mr. WOLF. So it has been in existence that long, and it was the DEA——

Ms. LEONHART. That long, DEA has run it, had the leadership ever since, but it truly is a multiagency center. It right now it has got 25 or 26 agencies all under one roof.

Mr. WOLF. How many people roughly are on the scene?

Ms. LEONHART. I would say probably about 400 or 500. I can get you that number. I know we've wanted to expand. We've had a lot of commitments, but space was limited. Money that this committee authorized for us is going to help expand and allow more—

Mr. WOLF. EPIC is the key. I mean, if you were to lose EPIC. So EPIC is the key. So any time the committee is looking, I mean, EPIC ought to be protected in every aspect, is that what you're saying?

Ms. LEONHART. Well, think of it like this: EPIC has the mission of looking at all kinds, it's not just drugs, it's the only center of its kind that's down there on that Southwest border that's looking at what is happening and is developing the common picture of what is going on, on both sides of the border.

It also has been integral in making sure that both U.S. law enforcement along the border and our Mexican counterparts working across the border are safe. We have programs that help develop information on—threat information regarding law enforcement officers, especially those within Mexico.

So it's become very, very important for our Mexican counterparts, as well as State and local, Federal U.S. law enforcement. We call it the jewel in the desert. And it is something to be protected.

CARTAGENA

Mr. WOLF. Cartagena, disciplinary actions. Last year several DEA agents were identified as having solicited services of prostitutes in Colombia and were alleged to have done so while assigned to drug enforcement operations and using government equipment such as cell phones to engage in inappropriate conduct.

I was surprised to learn that these individuals are still on the payroll and have not yet been subject to disciplinary or legal action. While I understand this is the subject of a current investigation, therefore you are going to want to say you're limited as to what you can say, explain to us what steps you have taken. How long has it been?

Ms. LEONHART. The incident happened about a year ago.

Mr. WOLF. A year ago, and the individuals are still being paid for by the United States taxpayer?

Ms. LEONHART. The three individuals are on limited duty, and I need to explain that we can't take disciplinary action against them until an investigation is done and until our Board of Conduct proposes discipline and our deciding officials give the discipline. And that is all part of the—I get this—I get this wrong, but I think it is the Civil Service Protection Act from the 1970s. Our agency falls within that because we are civil servants. We are not excepted service. So we have a system where, if there is allegations—and we take all these allegations seriously—and believe me, this is a serious allegation, especially because it is regarding three agents—that is investigated. It was investigated by the OIG unilaterally, but with our assistance. They completed that and forwarded a report last fall, but the report did not come with the supporting evidence, the documentation, all the things that we as an agency need to look at when our Board of Conduct determines discipline.

So it is still in the disciplinary process, and I can't talk about aspects of it. But know that it is probably on the back end, ready to come out of the disciplinary process, and at that point I would be glad to notify you when the disciplinary action is complete.

Mr. WOLF. Okay, I think it is a hard thing to explain to the American people why you have three individuals who have been involved in procuring prostitutes—and we won't get into the case—and to know that they're still on the DEA payroll, when there are many hard-working Americans who are looking for jobs and who are out of jobs, and also we have a problem with regard to the debt and deficit. And so this could go well over a year. This could go—I mean, that is just hard to understand.

I mean, are there changes in the civil service protection issue that DEA would like to see with regard to DEA agents? Is there something there?

Ms. LEONHART. Well, because that does not affect just DEA.

Mr. WOLF. I understand that, but——

Ms. LEONHART. It's many law enforcement agencies.

Mr. WOLF. But, you know, people who enforce the law, people who make the law, people who enforce the law should actually be—kind of have a higher standard than other people. I mean, if your job is to make the law, if your job is to enforce the law.

Ms. LEONHART. We agree.

Mr. WOLF. The Bible says, "though much is given, much is required," and the accountability issue. So I think in cases for them to be agents——

Ms. LEONHART. All our agency can do is make sure that there is a thorough investigation done. The actual process and how someone's disciplined is covered by the law.

Mr. WOLF. But I think you are going to have to look at this because you are almost sounding like the same witness on the Benghazi case. There were four individuals who were involved in Benghazi. We lost four Americans. And the individuals who are named are apparently still working at the State Department. There has been no—and so how do you explain that? That's a very hard thing.

I probably, along with Mr. Hoyer, I probably defend the Federal employees as much as anybody, bar none. I voted against my party time after time on the pay freeze. I think the pay freeze is stupid. I don't think it makes sense. I have spoken. This Congress froze the pay of CIA agents, and if you went to see the movie "Zero Dark Thirty," you saw that—did you see the movie?

Ms. LEONHART. I did.

Mr. WOLF. And you see the scene that seven were killed in Afghanistan?

Ms. LEONHART. Yes.

Mr. WOLF. I went to the memorial service for those families out at the Agency. And so the people who have taken their place, their salaries have been frozen for 3 years. That's crazy. What is this Congress doing? If you looked at the movie, that woman Maya, who tracked down bin Laden, Maya and her team's salary have been frozen for 3 years.

So I have not taken—I have differed with my party strongly on these issues. But when you see something like this, it's kind of the commonsense thing, it is not appropriate that you have people who have been active in doing this type of activity who are enforcing the law, to continue to be getting a Federal salary. And I think you and the State Department ought to get together. There may be some exemptive provisions that you cannot permit this to take place because you destroy the credibility of the Agency, and the credibility of those who were doing those things.

My mom and dad could answer this question very, very easily. This is not good. It is not appropriate.

Ms. LEONHART. We take this very seriously. We have always thought the faster this could be resolved, the better.

Mr. WOLF. I'm going to go to Mr. Fattah. We have questions, marijuana decriminalization. I think Dr. Harris and Mr. Bonner came up——

Mr. FATTAH. I will file some questions for the record.

AFGHANISTAN

Mr. WOLF. Okay. I was going to cover—the one I was going to was the Afghanistan one. And DEA has been operating with 82 positions in Afghanistan, with most of them funded through the Department of State. We have also deployed Foreign-deployed Advisory Support Teams, or FAST teams that are on 4-month rotations. How is DEA's mission being affected by the scheduled reduction in

the U.S. military presence in Afghanistan? What is your planned presence and role looking forward a year or two from now?

And how, for the record, how many people have died, DEA agents have died in Afghanistan?

Ms. LEONHART. I was going to start, sir, by thanking you for being at that memorial service yesterday, OPM's memorial service, where our three agents died in Afghanistan in the helicopter crash after a very successful drug mission.

Mr. WOLF. For the record, Congressman Hoyer and I were at OPM.

Ms. LEONHART. OPM?

Mr. WOLF. And Congressman Hoyer spoke where they had a star, and the name—and it was, I did not see you there, but it was stunning to hear how long it took John Berry to read the names of those who have been killed, and they all are from 2012. They didn't read the names before. It was incredible. How many agents have you lost?

Ms. LEONHART. We have 81 agents, task force officers and DEA employees on our memorial wall. And we will have a memorial service in May, and thank God we have no one to put on the wall this year. We've had close calls, our men and women working in Afghanistan. There's dangers every moment.

Mr. WOLF. How many agents have died in Afghanistan? Three with the helicopter.

Ms. LEONHART. Three, three.

Mr. WOLF. And how many have died in Mexico or Central America?

Ms. LEONHART. I would say at least three or four have died in Mexico. Another three or four have died in Colombia. And then we lost five on a mission in Peru back in the mid-1990s.

Mr. WOLF. Was that an aircraft?

Ms. LEONHART. Yeah.

Mr. WOLF. So what are your planned presence in Afghanistan?

Ms. LEONHART. So currently we have 82 positions there. All but 13 are actually paid for, paid for by the State Department. So we're looking at very closely, how do we draw down? We still have a mission to do, but we can't do it safely and we can't do it securely without our—a DOD presence there because they're the ones that go out with us on the mission.

We are working with the embassy folks in the State Department to figure out what the numbers are going to be, the limit on embassy personnel. We know we'll have a drawdown. We have stopped advertising to replace people as people come out. We will draw down our plans. They're not complete because they're too dependent on what the military mission is going to be. At one point they were going to be able to continue operations. Then it became more of a training mentor mission.

All those change what we were able to do in country. So we will not be at 82 come the end of 2014. We will have a presence in Afghanistan. We just don't know what the appropriate numbers will be yet.

Mr. WOLF. Once all of the American troops are out, will there still be DEA?

Ms. LEONHART. We are around the country—around the world in countries that impact on drug trafficking. Afghanistan, we feel, after everybody is long gone, we will still have a presence there because of their prominence in the world with heroin trafficking.

Mr. WOLF. Well, what trend is DEA seeing in the production and trafficking of opium and heroin from Afghanistan?

Ms. LEONHART. In——

Mr. WOLF. I mean, is it worse, better, the same?

Ms. LEONHART. A little uptick coming to the United States, not much. Still primarily going to Russia and Europe. But——

Mr. WOLF. Do the Russians and the Europeans have support people there also or do we carry the burden?

Ms. LEONHART. The Russians have people there, and have, in the past, have done an operation or two. They have liaison folks there as well. The Europeans have partners there. We have been working with them. We've worked with the Germans, the French, especially the Australians on a number of recent missions. So we have international partners that are all assisting us, supporting us, and helping us with our drug mission.

Mr. WOLF. But we carry the burden? America carries the burden?

Ms. LEONHART. We are the biggest. We are the biggest players right now. But the reason we're there is to develop our Afghan partners. And we have gone from a group several years ago that we put together, the National Interdiction Unit, they are to the point where they are like the SWAT team for Afghanistan, and they actually go on missions on their own out to different provinces in Afghanistan. They are going to be at a point where they will be able to do operations on their own.

From there, we built the SIU, our Sensitive Investigative Unit, that are the investigators, like the DEA agents. They have become very proficient doing wiretap investigations. They are to the point where they are able to do some of those missions on their own. And we just developed such a good partnership that we know when we do leave that we have done all we could to create like a DEA of Afghanistan, and then maybe someday we will not need to be there.

OVERSEAS OFFICES

Mr. WOLF. Okay. The last question, the new international offices in fiscal year 2013 expenditure plan, you identified two new overseas offices to be opened using existing resources, Phnom Penh, Cambodia, and Rabat, Morocco. Are you still planning to proceed with these openings. What will be the cost be that you incurred. If so, what costs will it incur in fiscal 2014.

[The information follows:]

FOREIGN OFFICES

DEA received Congressional approval to open six foreign offices following the submission of prior Congressional Relocation Reports (CRRs): the Dakar, Senegal Country Office; the Rio de Janeiro, Brazil Resident Office; the Ashgabat, Turkmenistan Country Office; the Beirut, Lebanon Country Office; the Karachi, Pakistan Post of Duty; and the Salta, Argentina Resident Office.

DEA requested approval to open the Rabat, Morocco Country Office and Phnom Penh, Cambodia Country Office in the CRR it sbumitted with the Department of Justice's FY 2013 Continuing Resolution Spend Plan.

These offices are at various stages in the process of being opened. DEA still plans to open these offices at some point in the future, but does not have an exact timeline for how many would be opened in FY 2013, FY 2014, or beyond at this point. It typically costs no more than $550,000 in one-time startup costs to open a new country office. DEA will fund the new offices from its existing international enforcement budget. Because DEA will shift existing vacant positions from other foreign offices, it does not expect any increases over what it would have to fill the existing positions.

Ms. LEONHART. Well, what we do with our international offices, we don't open one up without using the existing resources. So we do a right sizing. We've done a right sizing of our foreign presence, and we shift. So if we're going to open up an office in one country, say Karachi, we're going to open an office in Karachi, those positions are coming from someplace else because we have identified that as a threat area, a place that the drug threat shows we need to have a presence in.

So there's eight total that we've identified where we should be shifting our people to, and the House and Senate has approved six of them, and we're still waiting on two of them.

MARIJUANA

Mr. WOLF. Okay. I have no more questions, other than this one last. Would you submit for the record, but also if you could get it up to the staff, some of the latest information that Dr. Harris and Mr. Bonner were talking about with regard to the issue of marijuana, the harm, because the traffic issue, the safety issue, operating machinery, I mean, if you were living in there, could you be a bus driver in Seattle, and what are some of the—and I think it would be better if there are any independent studies that you have, you know, that we could take a look at, because I think this issue is going to certainly come up when the bill comes up on the floor.

[The information follows:]

Marijuana: Additional Information

Cannabis increases risk of psychosis in teens

Teenage cannabis users are more likely to suffer psychotic symptoms and have a greater risk of developing schizophrenia in later life, research has found.

By Laura Clout

12:10AM BST 02 Jun 2008

Among more than 6,000 youngsters interviewed for the largest study of its kind, users of the drug had a higher average number of symptoms associated with a risk of psychosis.

These included feeling like something strange or inexplicable was taking place, suspecting they were being influenced or followed and difficulty in controlling the speed of thoughts.

Researchers also found that those who took cannabis in adolescence had a greater risk of developing schizophrenia than older users of the drug.

The teenagers, aged 15 and 16, were asked about their drug use before their risk of developing a psychotic disorder was assessed by experts.

More than 5 per cent said they had used cannabis once or more, and one in 100 had used cannabis more than five times. Girls were more likely to take the drug than boys.

The study, carried out by a team at the University of Oulu in Finland, is published on Monday in the British Journal of Psychiatry.

Dr Jouko Miettunen, who led the research said: "These teenagers are likely to be vulnerable to the mental effects, which mean they are probably vulnerable to developing psychosis at some point."

SOURCE:

http://www.telegraph.co.uk/news/uknews/2063199/Cannabis-increases-risk-of psychosis-in-teens.html

Mr. WOLF. Anyway, unless Mr. Fattah—

Mr. FATTAH. No, I'm done. Thank you, Mr. Chairman. Thank you for your tremendous service.

Ms. LEONHART. Thank you.

Mr. WOLF. Yeah, I want to thank you, too. You have been very, very professional, very good, and I appreciate your service, and also everybody, from your agents to your nonagents, everybody at the DEA for the great job that you do. I appreciate it very much.

Ms. LEONHART. Thank you very much.

Mr. WOLF. The hearing is adjourned.

QUESTIONS FOR THE RECORD—MR. WOLF

DIVERSION CONTROL FUND

Question. The Diversion Control Fund is projected to grow four percent in fiscal year 201114, and has grown by 43 percent since fiscal year 2010, while other DEA discretionary funding has remained flat. Has this difference in resource growth been mirrored by changes in relative priorities for DEA enforcement efforts?

Answer. Addressing growing prescription drug abuse trends has been and will continue to be one of DEA's highest priorities. Because DEA is required to cover the full cost of the Diversion Control Program through registration fees paid into the Diversion Control Fee Account, DEA has been able to dedicate additional resources to Diversion Control activities without having to reduce resources for DEA's other drug enforcement priorities.

The budget growth for DEA's Diversion Control Program since FY 2010 has primarily supported two areas: (1) a significant increase in the number of Special Agents and Task Force Officers through the expanded use of Tactical Diversion Squads (TDSs) and (2) a renewed focus on DEA's regulatory oversight of more than 1.4 million DEA registrants. In addition, since FY 2010, the Diversion Control Program has also required additional support from intelligence analysts, attorneys, chemists, and administrative support personnel.

With the growth in resources, the Diversion Control Program has been able to increase the impact it is having on the individuals and organizations responsible for diverting controlled substance pharmaceuticals and listed chemicals. As demonstrated by the program performance measures reported in DEA's FY 2014 budget submission, the program has had the following gains in performance between FY 2010 and FY 2012: 43 percent increase in the number of diversion priority target organizations (PTOs) dismantled (262 to 375). 41 percent increase in the number of administrative and civil sanctions taken against registrants, including Orders to Show Cause, Immediate Suspension Orders, other administrative actions, and civil fines (1,519 to 2,143). 31 percent increase in the number of regulatory investigations (3,554 to 4,668).

UN WORLD DRUG REPORT

Question. The 2012 UN World Drug Report reported increases of more than 10% in cocaine, amphetamines, and heroin drug use in 2009–10. What are the current trends?

Answer. The most recent report is the 2013 UN World Drug Report. The following is a summary of the current trends described in the report.

Worldwide use of heroin and opium remains stable (around 16.5 million people, or 0.4 percent of the population aged 15–64), although high prevalence of use has been reported for Southwest and Central Asia, Eastern and Southeastern Europe and North America, and in recent years the United States has seen a spike in new initiates of heroin use, due to abuse of prescription opiates. In Europe specifically, there are indications that heroin use is declining, due to a number of factors, including an aging user population in treatment and increased interdiction of supply. Nevertheless, non-medical use of prescription opioids continues to be reported from some parts of Europe.

Arguably, parts of East and Southeast Asia run a higher risk of expansion of cocaine use (although from very low levels). Seizures in Hong Kong, China, rose dramatically, to almost 600 kg in 2010, and had exceeded 800 kg by 2011. This can be attributed to several factors, often linked to the glamour associated with its use and the emergence of more affluent sections of society. In the case of Latin America, in contrast, most of the increase appears to be linked to "spill over" effects, as cocaine is widely available and relatively cheap owing to the proximity to producing countries.

In North America, seizures and prevalence have declined considerably since 2006 (with the exception of a rebound in seizures in 2011). Between 2006 and 2011, cocaine use among the general population in the United States fell by 40 percent, which is partly linked to less production in Colombia, law enforcement intervention and inter-cartel violence.

While earlier, North America and Central/Western Europe dominated the cocaine market, today they account for approximately one half of users globally, a reflection of the fact that use seems to have stabilized in Europe and declined in North America.

In Oceania, on the other hand, cocaine seizures reached new highs in 2010 and 2011 (1.9 and 1.8 tons, respectively, up from 290 kg in 2009). The annual prevalence rate for cocaine use in Australia for the population aged 14 years or older more than doubled from 1.0 per cent in 2004 to 2.1 per cent of the adult population in 2010; that figure is higher than the European average and exceeds the corresponding prevalence rates in the United States.

The use of Amphetamine Type Stimulants (ATS), excluding "ecstasy," remains widespread globally, and appears to be increasing in most regions. In 2011, an estimated 0.7 percent of the global population aged 15–64, or 33.8 million people, had used ATS in the preceding year. The prevalence of "ecstasy" in 2011 (19.4 million, or 0.4 per cent of the population) was lower than in 2009

While use is steady in the traditional markets of North America and Oceania, there seems to be an increase in the market in Asia's developed

economies, notably in East and Southeast Asia, and there is also an emerging market in Africa, an assessment that is borne out by increasing diversions of precursors, seizures and methamphetamine manufacture. The estimated annual prevalence of ATS use in the region is higher than the global average.

At the global level, seizures have risen to a new high: 123 tons in 2011, a 66 percent rise compared with 2010 (74 tons) and a doubling since 2005 (60 tons). Mexico clocked the largest amount of methamphetamine seized, more than doubling, from 13 tons to 31 tons, within the space of a year, thus surpassing the United States for the first time.

Methamphetamine continues to be the mainstay of the ATS business; it accounted for 71 percent of global ATS seizures in 2011. Methamphetamine pills remain the predominant ATS in East and Southeast Asia where 122.8 million pills were seized in 2011, although this was a 9 percent decline compared with 2010 (134.4 million pills). Seizures of crystalline methamphetamine, however, increased to 8.8 tons, the highest level during the past five years, indicating that the substance is an imminent threat.

Methamphetamine manufacture seems to be spreading as well: new locations were uncovered in Poland and the Russian Federation. There is also an indication of increased manufacturing activity in Central America and an increase in the influence of Mexican drug trafficking organizations in the synthetic drugs market within the region.

Figures for amphetamine seizures have also gone up, particularly in the Middle East, where the drug is available largely in pill form, marketed as "captagon" pills and consisting largely of amphetamine.

Europe and the United States reported almost the same number of amphetamine laboratories (58 versus 57) in 2011, with the total number remaining fairly stable compared with 2010

While "ecstasy" use has been declining globally, it seems to be increasing in Europe. In ascending order, Europe, North America and Oceania remain the three regions with a prevalence of "ecstasy" use that is above the global average.

Question. The UN report does not include global data on abuse and trafficking of prescription pharmaceutical drugs, with the exception of opioids. Is there any other source of information on the international dimension of the problem?

Answer. DEA is not aware of any other sources of information on international prescription drug abuse trends. Although the UN's 2013 World Drug Report only includes limited information about the non-medical use of prescription drugs, it is probably the most comprehensive source available on global prescription drug abuse trends because it already copies statistics from other reports that are available. According to the report, "The misuse or non-

medical use of tranquillizers and sedatives such as benzodiazepines and barbiturates remains high and, at times, higher than that of many illicit substances. Along with the single use of tranquillizers (e.g. benzodiazepines), their use is commonly observed among polydrug users, especially among users of heroin who use benzodiazepines to enhance its effects, as well as those on methadone medication." Additionally, "The misuse of prescription opioids is also increasingly being reported from different regions. Tramadol is an opioid painkiller that is not under international control, whose misuse is being reported from many countries in Africa, the Middle East, Asia (including China) and the Pacific Islands."

PRESCRIPTION DRUGS

Question. In your testimony, you described the effectiveness of prescription drug monitoring plans (PDMPs) and said the next step would be to make them interoperable, and to hook them up with State health records. Please describe the scale of the effort needed to accomplish this, and the kinds and level of grant and other resources that might be used.

Answer. DEA strongly supports Prescription Drug Monitoring Programs (PDMP) and encourages their use by medical professionals to help detect and prevent doctor shopping and other forms of diversion. Currently, 46 states have an operational PDMP; 3 more states have enacted PDMP legislation, but do not have operational programs; and one state (Missouri) and the District of Columbia do not have legislation. Interconnectivity remains a priority, as many drug traffickers and drug seekers willingly travel hundreds of miles to gain easy access to unscrupulous pain clinics and prescribers and to avoid detection by PDMPs.

While PDMPs are run by the states, there is federal funding available through the Department of Justice's PDMP grant program, administered by the Bureau of Justice Assistance. In FY 2013, the program received $6.5 million (after rescissions and sequestration) and $7 million is requested in the FY 2014 President's Budget.

Through these grants, the Department supports efforts to enhance the benefits of state PDMPs by providing the means for prescribers and pharmacists to more easily identify drug abuse and misuse when patients cross state lines to obtain drugs. Interoperability between state systems and data sharing among states would accomplish this. DEA is not in a position to determine scale of effort required to accomplish interoperability. States are able to work together to develop standards and plans for interoperability through the Alliance of States with Prescription Monitoring Programs.

Question. In addition to DEA enforcement, please describe complementary efforts by HIDTAs and State and local law enforcement, including any estimates of staffing and funding.

Answer. Preventing Prescription Drug Abuse is one of the policy focuses of the Administration's 2013 National Drug Control Strategy. The Administration remains committed to coordinated federal, state, and local efforts. DEA's Tactical Diversion Squads (TDSs) are a key element of DEA's enforcement strategy to address the diversion of controlled substances. These teams are solely dedicated to investigating, disrupting, and dismantling individuals and organizations involved in drug diversion schemes. They combine the expertise of diversion investigators, special agents, and task force officers from various state and local law enforcement or regulatory agencies. An important purpose of TDS groups is to provide coordination with different judicial districts to maximize the effectiveness of multiple investigations and prosecutions. In addition to TDSs, HIDTA task forces and other collaborative enforcement groups will continue to shut down pill mills, build cases against improper prescribers, and stop flows of diverted prescription medications.

The National Methamphetamine and Pharmaceuticals Initiative (NMPI), funded through ONDCP's HIDTA program, has provided critical training on pharmaceutical crime investigations to law enforcement agencies across the country. These efforts continue to disseminate critical knowledge and skills to the enforcement professionals that enable them to address pill mills operating in their jurisdictions. Because these complementary efforts are funded by ONDCP or individual state and local law enforcement agencies, DEA is not able to estimate the staffing and funding that other agencies dedicated to diversion control efforts.

Question. At the hearing last year you identified a possible change in the text of Title 21, to delete the word "narcotic" as a way to extend the reporting requirement for drug distributors to cover mediations beyond just narcotics, and cover other prescription drugs of concern for abuse and trafficking, and whether changes in penalties might help deter traffickers. Have there been any further developments on this?

Answer. There have been no further developments on this issue. For DEA to remove "narcotic" from its Title 21 text would require Congressional action. Congressman Rogers raised this issue during the Attorney General's FY 2013 Appropriations Hearing; at that time, he stated the committee would take it under consideration.

Question. In fiscal year 2012 DEA expanded its Tactical Diversion Squads. How much funding was used for such efforts in fiscal year 2102, and is

estimated for fiscal years 2013–14, and how many squads will be deployed in FY13 and are planned for FY14?

Answer. In total, the cost to operate Tactical Diversion Squads (TDSs) in FY 2012 was $56.5 million. Based on costs through 2013 and plans for future TDS expansion, DEA will obligate an estimated $71.8 million in FY 2013 and $81 million in FY 2014.

As of July 1, 2013, there are 58 operational TDS's throughout the United States and Puerto Rico. Eight more squads are expected to become operational before the end of FY 2013. By the end of FY 2013, DEA will have a total of 66 TDSs including 258 Special Agents, 84 Diversion Investigators, and approximately 300 task force officers. During FY 2014 DEA will continue its efforts to maintain DEA and task force officer staffing levels on the 66 TDSs and will continue to evaluate requirements for additional TDSs.

PUERTO RICO AND VIRGIN ISLANDS

Question. Given the continued severe trafficking problems in Puerto Rico and the Virgin Islands, what is the current presence, in terms of law enforcement, specialist and support personnel there, and what is projected for FY14?

Answer. DEA continues to devote all available resources to attack the drug-related violent crime threat impacting Puerto Rico and the U.S. Virgin Islands, and is taking action to address this threat to public safety in coordination with state and federal partners. DEA continues to participate with federal and local law enforcement agencies in Puerto Rico with the goal of coordinating and collaborating on Puerto Rico's security and safety threats.

In 2009, DEA established incentives to increase the Caribbean Field Division's staffing levels from the low of 82 percent (108 of 132 special agents on board) in FY 2008 to 91 percent (125 of 137 special agents on board) at the beginning of FY 2013, bringing it equal with the average onboard strength of the rest of the domestic divisions. As of July 2013, DEA had a total of 198 positions on-board in the Caribbean division. This includes 121 special agents, 12 diversion investigators, and 17 intelligence research specialists. With the uncertainty of the budget situation in FY 2014, it is difficult to project Caribbean Field Division staffing levels through FY 2014.

MEXICAN CARTELS

Question. You have testified here in the past that 90 percent of drugs smuggled into the U.S. come through the Mexican cartels. Youve also described them as gaining strength in drug distribution markets they do not currently control. What share of the U.S. illicit drug market is currently controlled by

those cartels? To what extent are the cartels beginning to control domestic production of illicit drugs (such as marijuana and methamphetamines), and prescription drug trafficking?

Answer. DEA maintains that 90 percent of drugs smuggled into the U.S. come through the Mexican cartels. However, DEA is not able to accurately quantify how much of the

U.S. illicit drug market is tied to those cartels. What DEA can say is that Mexican Transnational Criminal Organizations (TCOs) represent the greatest organizational drug threat to the nation. Mexican TCOs remain the primary transporters of wholesale quantities of cocaine, heroin, and methamphetamine to US markets, as well as significant quantities of marijuana. These groups are expanding drug trafficking operations into new regions and increasing their control of heroin and methamphetamine distribution in new markets. Mexican traffickers are further solidifying their dominance of the US illicit drug market through collaboration with US-based criminal gangs while the gangs are becoming more involved in wholesale drug distribution through their relationships with the Mexican organizations.

Marijuana availability appears to be increasing because of sustained high levels of production in Mexico and increased domestic cannabis cultivation. Mexican TCOs and criminal groups in California are increasingly disguising cannabis cultivation sites as "medical marijuana" grows on private lands.

Mexican methamphetamine availability is increasing in the United States, based on law enforcement reporting, price and purity data, and increased methamphetamine flow across the Southwest Border. Mexico is the primary source of methamphetamine in the United States.

Neither intelligence nor investigative activities have revealed that Mexican cartels are involved in the distribution of controlled substance pharmaceuticals. The majority of prescription drugs entering the illicit US market are diverted domestically through "pill mills" or obtained via rogue Internet pharmacies.

Question. What programs and funding in the FY14 DEA request are targeted at attacking the disruption and dismantling of Mexican cartels?

Answer. Many DEA offices, both domestically and overseas, target Mexican cartels. When DEA prepares its budget, it does not specify a level of resources specifically for disrupting and dismantling Mexican Drug Cartels, but it can project an approximate level of positions and resources that will be allocated to its offices on both sides of the Southwest Border (SWB). Contingent on Congressional action, including any additional sequester reduction, DEA will have 1,822 positions, including 1,075 Special Agents, and $381 million supporting the SWB in FY 2014. These resources support SWB field offices in the United States, DEA offices in Mexico, and the El Paso Intelligence

Center (EPIC). DEA has 29 percent of its allocated domestic Special Agent positions assigned to the SWB. Overall, 23 percent of DEA's allocated Special Agent positions are assigned to SWB field offices in the U.S. and Mexico. In addition to those agents and resources physically located along the SWB, it is important to note that DEA agents in virtually every office and division in the US are working Mexican trafficking organizations, due to the dominance of these organizations in the US drug market

Specific DEA programs include the Mexican Sensitive Investigative Unit (SIU), which is comprised of 82 Federal Police investigators. The DEA-vetted and trained SIU has an authorized ceiling of 100 investigators from Secretariat of Government Federal Police (SEGOB-FP). The SIU also receives support from prosecutors working for Mexico's Office of the Attorney General (PGR).

Specific Operations include Project Below the Beltway, which targeted the Sinaloa and Juarez Cartels and violent street gangs and their distribution network in America. This initiative began in May 2010 and culminated on December 6, 2012.

The Sinaloa and Juarez Cartels are responsible for bringing multi-ton quantities of narcotics, including cocaine, heroin, methamphetamine, and marijuana, from Mexico into the United States. These cartels are also believed to be responsible for laundering millions of dollars in criminal proceeds from illegal drug trafficking activities. Project Below the Beltway, comprised of investigations in 79 U.S. cities and several foreign cities within Central America, Europe, Mexico, South America, and elsewhere, resulted in 3,780 arrests and the seizure of 6,100 kilograms of cocaine, 10,284 pounds methamphetamine, 1,619 pounds of heroin, 349,304 pounds of marijuana, $148 million dollars in U.S. currency, and $38 million dollars in other assets. Individuals indicted in the cases are charged with a variety of crimes, including various felony provisions of the Controlled Substances Act; conspiracy to import controlled substances; money laundering; and firearms violations. DEA's Special Operations Division (SOD) coordinated Project Below The Beltway, which involved the participation of the Federal Bureau of Investigation (FBI), U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), the Internal Revenue Service (IRS), Customs and Border Protection (CBP), the United States Marshals Service, the Office of Foreign Asset Control, and numerous state and local law enforcement entities.

In addition, DEA initiated a domestic component to Operation All Inclusive 2012, which focused on drug and bulk currency smuggling along the SWB. Operation Doble Via Arizona/Texas began with intelligence collection in order to identify gatekeepers and predict trafficker reaction to law enforcement initiatives. The operational phase ran from July to October 2012 and consisted of intelligence driven, multi-agency enforcement and interdiction operations focused on the disruption of the drugs, money, chemicals, and

weapons flowing on both sides of the SWB. Continued intelligence collection during the operational phase linked seizures to particular DTOs. As a result of these efforts, authorities arrested 669 individuals and seized 151,966 pounds of marijuana, 1,023 pounds of methamphetamine, 911 kilograms of cocaine, 128 kilograms of heroin, and $12.9 million.

The El Paso Intelligence Center (EPIC) is a national tactical intelligence center that focuses its efforts on supporting law enforcement efforts in the Western Hemisphere with a significant emphasis on the SWB. Through its 24-hour watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts. This function is critical in the dissemination of relevant information in support of tactical and investigative agencies, deconfliction, and officer safety. Specific EPIC programs include:

EPIC's Gatekeeper Project is a comprehensive, multi-source assessment of trafficking organizations involved in and controlling movement of illegal contraband through "entry corridors" along the SWB. Numerous Gatekeepers have direct links to Priority Target Organizations (PTOs) and/or Consolidated Priority Target Organizations (CPOTs). EPIC's Tactical Support Unit will be preparing three quarterly and one annual Gatekeeper Project assessment for the SWB for FY 2013.

These assessments will be divided into four areas: South Texas, West Texas/New Mexico, Arizona, and Southern California. With the demise of a number of high- level traffickers in Mexico, the cartel-affiliated territorial boundaries along the SWB are constantly in a state of flux because cartel members are fighting for control. The assessments will be tactical with in-depth analysis of each cartel's corridor's criminal infrastructure, and its strengths, weaknesses, and abilities to effectively transport drugs across the border.

EL PASO INTELLIGENCE CENTER

Question. EPIC employees currently represent about 26 different federal, State, local and international law enforcement agencies, as well as some from the intelligence community. In FY12 DEA received $10 million to expand the site and accommodate additional personnel. What was accomplished with that funding? What level of agency participation at EPIC will be supported through the FY14 request?

Answer. DEA obligated the $10 million in construction funding before the end of FY 2012 and began the design discussions for the EPIC expansion in December 2012. These discussions included the contracted architects and engineers from Frankfurt-Short- Bruza Associates (FSB), along with DEA

Headquarters (HQs) Facilities, Army Corps of Engineers, EPIC, and all relevant Ft. Bliss entities. FSB developed construction drawings for a 50 percent design submission that were submitted for government review on August 5, 2013. The deadline for completing 95 percent of the construction drawings is November 1, 2013. Corrected final documents are to be completed by December 20, 2013, with the anticipated construction contract to be awarded in February 2014.

EPIC's executive leadership, responsible for managing the center's mission requirements, is comprised of an appointed DEA SES-level EPIC Director, an appointed non-DEA SES-level Deputy Director, and three Associate Deputy Directors at the GS-15 (or equivalent grade) or SES level. Current on-board staffing assigned to EPIC from all participating agencies, including contract personnel, is 441, with a total of 571 authorized positions when all existing vacancies are filled as expected. Based on the current budget outlook, agency staffing levels at EPIC are anticipated to remain the same for FY 2014.

METHAMPHETAMINE LABS AND TRAFFICKING

Question. What are current estimates of methamphetamine abuse in the U.S., and what patterns are being seen in production and trafficking of methamphetamines and precursor chemicals?

Answer. One indicator of abuse patterns is the National Survey on Drug Use and Health. According to the most recent survey in July, methamphetamine use among persons aged 12 or older declined by 40 percent between 2006 and 2011.

Regarding production and trafficking patterns, availability indicators reflect that Mexican methamphetamine availability is increasing in the United States. Law enforcement reporting, price and purity data, and increased methamphetamine flow across the Southwest Border all indicate rising domestic availability. Methamphetamine availability in most areas of the United States is directly related to high levels of methamphetamine production in Mexico.

According to DEA reporting, methamphetamine is the number one drug threat in the Dallas, Denver, Los Angeles, San Diego, San Francisco, Seattle, and St. Louis Field Divisions. Additionally, the Chicago, Houston, and Phoenix Field Divisions rank methamphetamine as their number two drug threat

Mexico is the primary source of methamphetamine in the United States and laboratory and precursor chemical seizures in Mexico remain high. Because the Government of Mexico has tight restrictions on the importation of precursor

chemicals, traffickers are increasingly importing precursor chemicals through Central America.

Question. I understand DEA expects to administer 8,800 meth lab cleanups in FY13 Have requests for cleanup been met, or do they exceed resources available? What are projections for FY14, and how would such cleanups be funded (e.g., with DEA or COPS funding)?

Answer. As of June 2013, DEA projects that it will administer 8,263 state and local lab cleanups (includes container labs and non-container labs) in FY 2013. In FY 2013, DEA is receiving a $12.5 million transfer from COPS, which provides $11.87 million after the sequestration is applied to the transfer. This transfer funding from COPS will be sufficient to support all state and local cleanup requests in FY 2013, largely because DEA has been able to reduce cleanup costs by working with its state and local partners to expand the use of the Container Program.

DEA projects that it will administer 9,850 state and local lab cleanups (includes container labs and non-container labs) in FY 2014. DEA expects the $12.5 million requested for COPS to reimburse DEA for state and local meth lab cleanup and training assistance to be sufficient to cover all state and local cleanup requests in FY 2014.

Question. Ten States currently participate in the container program. Are other States seeking to join, and if so, what impact would that have on reducing the cost of such cleanup? Is there sufficient funding in the fiscal year 2014 request to accommodate requests to participate?

Answer. As of June 2013, there are 10 states with operational container programs: Illinois, Alabama, Virginia, Indiana, Oklahoma, North Carolina, Kentucky, Arkansas, Tennessee, and Michigan. DEA has signed letters of agreement with an additional 6 states to implement the program: Mississippi, New York, Florida, Pennsylvania, Kansas, and Ohio. DEA is working with these states to identify container sites, procure equipment and supplies, and schedule training for law enforcement. It typically takes 9–12 months to go from a signed Letter of Agreement to a fully operational container program. We expect three of the six states (Ohio, Florida, Mississippi) to become operational in FY 2013 and the other three states (Kansas, Pennsylvania, New York) to become operational in FY 2014. The expansion of the container program has led to significant savings and has allowed DEA to meet all cleanup costs with the funding transferred from COPS. DEA expects some additional savings from adding more container states during FY 2013 and FY 2014, but for the most part, the states that historically have had a large number of cleanups already have operational container programs. Ongoing

funding is required to operate and maintain existing container programs, including training, equipment, and supplies.

DEA expects the $12.5 million requested for COPS to reimburse DEA for state and local meth lab cleanup and training assistance to be sufficient to cover all state and cleanup requests, operate and maintain existing container programs, and add new states that want to join the program FY 2014.

TRADE-BASED MONEY LAUNDERING

Question. We understand that criminal enterprises have been increasingly using trade-based money laundering to disguise their criminal proceeds as legitimate shipments of goods. While the Treasury Department estimates this form of money laundering is common in South Asia and the Middle East, it is also used in the Western Hemisphere, including through such avenues as the so-called "black market peso exchange." Has DEA seen an increase in this form of money laundering including with countries such as Venezuela? Could you provide estimates of the magnitude of the criminal proceeds that are channeled through such mechanisms?

Answer. DEA has seen an increase in major money laundering organizations (MLO's) utilizing Venezuela to launder their illicit proceeds. Three variations of either the Trade-Based Money Laundering (TBML) or the Black Market Peso Exchange (BMPE) are used in Venezuela to launder criminal proceeds.

The first variation used by the MLO's, which is a derivative of TBML, is over and under invoicing. This is simply a method to move monies from one country to another and involves receipts for services that are either not provided or not accurately reflected. For example, MLO "A" needs to send $1,000,000 to Target "B," so it orders $1,100,000 of a product from Target "B" company. Target "B" will send MLO "A" $100,000 worth of product and an invoice for $1,100,000. MLO "A" pays the $1,100,000 ($100,000 for the product and $1,000,000 in illicit proceeds which are disguised in the invoice) and the monies are laundered.

The second most common form of trade based money laundering in Venezuela involves natural resources and the buying and selling of commodities, most commonly diesel fuel. This is done the same way as traditional TBML only the merchandise is in the form of oil, or an oil derivative. Gold is another form of commodity which is commonly used in Venezuela and the primary MLO's laundering monies through precious metals have historically been associated with terrorist organizations as well. DEA has seen an increase in money laundering by the Hasidic population through the buying and selling of precious metals, for example buying gold in Venezuela and then transferring

the funds through the form of Hawala's or mirror exchanges to other countries such as Colombia.

The Black Market Peso Exchange (BMPE) is currently the largest known money laundering system in the Western Hemisphere, responsible for moving an estimated $5 billion worth of drug proceeds from the United States back into Colombia. The Financial Crime Enforcement Network (FinCEN) believes that this figure represents between 40 and 50 percent of the wholesale value of Colombian narcotics income gathered from distribution in the United States. United States Customs Service (USCS) Commissioner Raymond Kelly referred to the BMPE as the "ultimate nexus between crime and commerce, using global trade to mask global money laundering." In fact, numerous Fortune 500 companies such as Whirlpool, Sony, Bell Helicopter and Philip Morris have watched their goods being used as pawns in this massive money laundering system.

Question. What role does DEA play, in coordination with Treasury, DHS, and international partners, in going after such trade-based money laundering, and what level of funding and staffing has it applied to that effort in fiscal years, and will it use in fiscal years 2013 and 2014?

Answer. Through DEA's Office of Financial Operations and specialized money laundering groups in each of DEA's 21 domestic field divisions, DEA uses its drug intelligence information, technology, and special agent resources to aggressively address the drug trade business. In this effort, DEA works closely with elements of the private sector, including federal and state regulators who oversee the industry. To make a significant impact on the drug trade in the United States, DEA is tracking and targeting illicit drug money back to the sources of supply before it can be used to finance the next production cycle of illegal drugs.

DEA routinely coordinates with Treasury and our interagency partners to target trade-based money laundering schemes. A recent example is the Lebanese Canadian Bank investigation. In 2007, the DEA identified an ongoing, international trade- based money laundering conspiracy led by Lebanese national Ayman Joumaa designed to conceal the proceeds obtained from illicit drug sales and other criminal activity through the purchase and shipment of used vehicles from the United States to West Africa. The Joumaa DTO (Drug Trafficking Organization) is suspected of laundering more than US $400 million annually in proceeds through the Lebanese Canadian Bank (LCB) and Lebanese exchange houses. The LCB and these exchange houses are believed to pay a large percentage of the currency they handle to Hezbollah, which has significant command and control over this trade based used car money laundering scheme. The investigation resulted in OFAC

sanctions against Joumaa, his associates and business entities, a 311 Patriot Act sanction against the Lebanese Canadian Bank (LCB), seizure orders seeking funds (totaling approximately $150 million US dollars) contained in the correspondent accounts of Banque Libano Francaise associated with the sale of LCB, and an indictment against Joumaa for drug and money laundering offenses in the Eastern District of Virginia.

In addition, DEA continues to work with foreign offices attacking DTOs' financial components with a particular focus on bulk currency movements in Europe. In 2012, DEA, working in concert with the Dutch National Police, identified Mexican drug trafficking cells operating in Amsterdam and seized millions of dollars in drug proceeds from Mexican traffickers.

While we can't specifically track what we spent on trade-based money laundering, the following are specific examples of resources targeting the financial aspects of the drug trade. In FY 2012, AFF approved just over $21 million in funding for DEA's Financial Operations Section for various operations and support functions. In FY 2013, AFF has approved approximately $20.8 million in funding for DEA's Financial Operations Section. AFF allocations for FY 2014 have not yet been finalized.

DOCUMENT AND MEDIA EXPLOITATION

Question. You have previously testified that the document and media exploitation (DOMEX) activity of the recently closed National Drug Intelligence Center, which evaluated large volumes of documents and data in support of active investigations, would need to be sustained were NDIC to be abolished. With NDICs closure, has DEA replicated this capability? If so, what resources is DEA applying to such activity in fiscal year 2013 and are planned for fiscal year 2014? Given that non-DEA customers were accounting for half the use of DOMEX production in the past, are they contributing any funding support for this service?

Answer. DEA established, under its Office of Special Intelligence, a Document and Media Exploitation Section in the Intelligence Division. This section includes three DOMEX teams and a small IT support group. The Document and Media Exploitation Section field teams supporting the Organized Crime Drug Enforcement Task Force Strike Forces in Atlanta, Houston, El Paso, Phoenix, and San Diego, as well as an element located at the Utah National Guard in Salt Lake City will remain in place and report directly to the Document and Media Exploitation Section. In addition, DEA established a new field team at the OCDETF Strike Force in Chicago in May 2013. DEA has integrated the information processing requirements, which were previously housed on a stand-alone network, to existing DEA infrastructure

and is in the process of shutting down the NDIC network. This integration allows the Document and Media Exploitation Section to use the existing DEA infrastructure for moving and analyzing electronic data more efficiently and to minimize TDY costs. DEA has also deployed a new electronic request process to facilitate investigators requests and status tracking. This streamlined process also allows DEA to coordinate the missions of the teams in Merrifield and the field offices, to prioritize requests across the entire program, and to better support the OCDETF community.

Since the transition of the DOMEX program to DEA, DOMEX has continued to provide support to federal prosecutors and investigators from a variety of agencies. During its first year of operations under DEA leadership, DOMEX has supported 117 investigations. While 115 of the requests were submitted by DEA, 91 of the investigations (78%) were OCDETF investigations, and the support was provided to all the OCDETF participants in each investigation. DOMEX support continues through the judicial process and DOMEX frequently supports the prosecution teams in preparing information for use before a grand jury or in trial.

The FY 2013 enacted appropriation included $8 million for these programs; however, like the rest of DEA's programs, sequester reduced resources available to support this function. The FY 2014 budget will support these programs in a similar fashion. DEA does not receive funding from any other source to support Document and Media Exploitation.

INTERAGENCY COOPERATION IN NARCOTICS ENFORCEMENT

Question. As part of the 2009 agreement signed by DEA and the U.S. Immigration and Customs Enforcement (ICE) you established a team of top managers from both agencies to periodically review implementation of the agreement. One area of difference between the two agencies in the past has been in determining whether an investigation had a "nexus to the border", therefore allowing ICE to investigate. Have the agencies agreed on an approach to classifying investigations on the border? What are current estimates of methamphetamine abuse in the U.S., and what patterns are being seen in production and trafficking of methamphetamines and precursor chemicals?

DEA and ICE DEA and ICE do not classify investigations on the border. However as outlined in the 2009 Interagency Cooperation Agreement (ICA), cross-designated Immigration and Customs Enforcement Homeland Security Investigations (ICE/HSI) agents are authorized to investigate narcotics smuggling with a clearly articulable nexus to the United States border or ports of entry (POE). A case does not have such a nexus simply because at one time the narcotics crossed the border or came into a POE or because the

target merely purchased narcotics from those who smuggled the narcotics across the border. Instead, authorized agents will investigate only illegal drug importation/exportation schemes, including the transportation and staging activities within the United States or between the source or destination country and the United States. Unless authorized as part of a DEA task force or upon request of DEA, authorized ICE/HSI agents will not investigate cases of solely domestic production, sale, transportation, or shipment of narcotics.

In conducting any Title 21 investigation or enforcement activities, cross designated ICE/HSI agents must comply with all of the coordination, deconfliction, and information sharing policies and procedures set forth in the ICA.

Methamphetamine Trends One indicator of abuse patterns is the National Survey on Drug Use and Health. According to the most recent survey in July, methamphetamine use among persons aged 12 or older declined by 40 percent between 2006 and 2011.

Methamphetamine production falls generally into two categories. The primary source of methamphetamine distributed in the United States is from a number of highly structured Mexican drug trafficking groups operating clandestine "super labs" in Mexico with distribution networks within the United States. "Super labs" are those labs capable of producing more than ten-pound quantities of methamphetamine in a single production cycle. There have been recent methamphetamine laboratory seizures in Mexico where the capacity far exceeds the ten pound minimum for "super lab" status. It is estimated that more than 80% of the methamphetamine sold in the U.S. originates from Mexican drug trafficking organizations operating both within Mexico and the United States.

The second category of methamphetamine production is small production capacity laboratories (SPCLs). Domestic SPCLs are the most frequently encountered type of clandestine laboratory. These SPCLs tend to be low production operations (grams or ounces), and make up only a small percentage of the drug that is consumed in the United States. The emergence of the "one-pot labs" (a.k.a. "shake-n-bake" labs) constitute the majority of SPCLs found domestically. These laboratories are normally found in 2 liter plastic soda bottles, 16 or 20 oz. drink containers, and other such receptacles. Despite their size, law enforcement frequently finds many of these containers at individual lab sites.

The precursor chemicals needed for the production of methamphetamine should also be broken into two categories: Mexico and Central America produced methamphetamine as well as domestically produced methamphetamine.

The DEA Mexico Country Office believes that the most common methamphetamine production method in Mexico is with the phenyl-2-propanone

(P2P) method of manufacturing methamphetamine. The stringent international controls on P2P, a Table 1 precursor chemical, have made obtaining this necessary methamphetamine precursor chemical more difficult. Mexican methamphetamine Drug Trafficking Organizations (DTOs) are adapting and are using precursor chemicals that are not controlled internationally to produce methamphetamine.

Precursor chemicals are being shipped to Mexico from Asia, primarily from China and India. Chemicals destined for Mexico are also shipped through Guatemala, Nicaragua and Honduras.

U.S. domestically produced methamphetamine in the SPCLs utilize chemicals that are easily obtained. Many of the supplies required can be purchased over the Internet, in hardware stores, gas stations, convenience stores, and at other retail establishments. Pseudoephedrine and ephedrine are the principal precursor chemicals used in the SPCLs and are purchased over the counter from retail pharmacies and convenience stores.

Question. I understand DEA expects to administer 8,800 meth lab cleanups in FY13. Have requests for cleanup been met, or do they exceed resources available? What are projections for FY14, and how would such cleanups be funded (e.g., with DEA or COPS funding)?

Answer. As of June 2013, DEA projects that it will administer 8,263 state and local lab cleanups (includes container labs and non-container labs) in FY 2013. In FY 2013, DEA is receiving a $12.5 million transfer from COPS, which provides $11.87 million after the sequestration is applied to the transfer. This transfer funding from COPS will be sufficient to support all state and local cleanup requests in FY 2013, largely because DEA has been able to reduce cleanup costs by working with its state and local partners to expand the use of the Container Program.

DEA projects that it will administer 9,850 state and local lab cleanups (includes container labs and non-container labs) in FY 2014. DEA expects the $12.5 million requested for COPS to reimburse DEA for state and local meth lab cleanup and training assistance to be sufficient to cover all state and cleanup requests in FY 2014.

WESTERN LABORATORY

Question. DEA has identified in its expenditure plan a requirement to relocate its Western Laboratory no later than April 2014, at a cost of around $15 million. What is the status of the move, and how is it addressed in the FY14 request?

Answer. The Western Laboratory will relocate from its current location in San Francisco to Pleasanton, CA. GSA awarded a lease in May 2013. The design intent process is currently underway. Construction is anticipated to begin in February 2014 with a completion date of October 2014. DEA anticipates occupancy in November 2014. This is a draft schedule, and all parties are working to compress the schedule if possible. Most of the construction related costs of this move are being amortized in the annual rent and will be spread over the life of the lease.

SYNTHETIC DRUGS

Question. Please provide the level of DEA funding and staffing resources in fiscal 2012 (and estimated for fiscal years 2013–14) being applied to efforts to curb the manufacture, distribution, and use of synthetic drugs, to include those marketed as "bath salts" and other labels that to mislead as to their intended purpose.

Answer. DEA does not budget by drug type. However, based on work hours and investigative costs for synthetic drug cases (Synthetic Cathinones and Synthetic Cannabinoids), DEA obligated an estimated $7.6 million and 45 FTE to these cases in FY 2012 and is on pace to obligate $10.8 million and 61 FTE in FY 2013. We expect to obligate a similar level of resources in FY 2014, but the actual resource requirements will depend on drug trends.

In June 2013 DEA and its law enforcement partners announced the results of Project Synergy, which involved enforcement operations in 35 states targeting the upper echelon of dangerous designer synthetic drug trafficking organizations. These enforcement actions included retailers, wholesalers, and manufacturers. In addition, these investigations uncovered the massive flow of drug-related proceeds back to countries in the Middle East and elsewhere.

As a result of Project Synergy from December 2012 to June 2013, more than 227 arrests were made and 416 search warrants served in 35 states, 49 cities and five countries, along with more than $51 million in cash and assets seized. Altogether, 9,445 kilograms of individually packaged, ready-to-sell synthetic drugs, 299 kilograms of cathinone drugs (the falsely labeled "bath salts"), 1,252 kilograms of cannabinoid drugs (used to make the so-called "fake pot" or herbal incense products), and 783 kilograms of treated plant material were seized.

Project Synergy was coordinated by DEA's Special Operations Division, working with the DEA Office of Diversion Control, and included cases led by DEA, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), FBI, and IRS.

In addition, law enforcement in Australia, Barbados, Panama, and Canada participated, as well as countless state and local law enforcement members.

QUESTIONS FOR THE RECORD—MR. ADERHOLT

RISE OF HEROIN USE

Question. I have heard from local law enforcement in Alabama that heroin use is on the rise. Is this related to the increased rise of Mexican cartels in the U.S.? Is it a nationwide problem or are you finding it a regional problem?

Answer. Heroin availability is continuing to increase in the U.S., most likely due to an increase in Mexican heroin production and Mexican traffickers expanding into markets traditionally supplied with heroin from other sources. The amount of heroin seized at the Southwest Border increased significantly between 2008 and 2012 and this, along with other indicators, points to increased smuggling of both Mexican- produced heroin and South American-produced heroin through Mexico.

Additionally, in recent years, due to the overwhelming abuse of prescription psychotherapeutic drugs, more specifically opiates, the United States has seen a spike in new initiates of heroin abuse. Law enforcement agencies across the country have confirmed this and are reporting to DEA that they are beginning to observe young people who became addicted to opioid prescription drugs but cannot continue to pay for them and who have turned to heroin as a cheap alternative to prescription opioids.

According to national-level survey data, the number of new heroin users has recently been increasing. The National Survey on Drug Use and Health reports the number of new heroin users increased from 142,000 in 2010 to 178,000 in 2011. Both numbers are a sizeable increase from the average annual estimates of 2002 to 2008 (ranging from 91,000 to 118,000).

Moreover, these new heroin users are considerably younger. In 2011, the average age at first use among heroin abusers aged 12 to 49 was 22.1 years and in 2010 it was 21.4 years, significantly lower than the 2009 estimate of 25.5 years. In Minneapolis, for example, arrestees testing positive for opiates were much younger

(19.8 percent were under 21 years of age) than those testing positive for cocaine and methamphetamine, according to the Arrestee Drug Abuse Monitoring (ADAM) II program.

METHAMPHETAMINE

Question. I have also heard from local law enforcement in Alabama that meth use is declining. Are you seeing this nationwide?

Answer. No. Nationwide abuse and demand data indicate that methamphetamine abuse is stable. Although the number of amphetamine-related treatment admissions is slowly but steadily declining, the number of new methamphetamine abusers ("past year initiates") fluctuated but remained statistically similar from 2008 to 2011. The number of current users increased from 2010 to 2011, but also remained statistically similar and did not exceed the number reported in 2009. Arrestee data in 2011 confirmed regional abuse patterns, with large percentages of arrestees in the western states testing positive for methamphetamine and much lower rates in eastern states where methamphetamine abuse is not as common.

Question. It appears that because of both federal and state efforts to restrict access to meth precursors, homegrown meth labs are declining. However, trafficked meth is on the rise again, but the price has doubled in the last year or so. Again, are you seeing this nationwide, or is this a regional change?

Answer. While most methamphetamine consumed in the United States is transported from Mexico, domestic production still occurs throughout the country. Most methamphetamine labs seized domestically are small labs (e.g. "one-pot" or "shakeand- bake") that produce methamphetamine in small (less than 2 ounce) batches. While seizures of domestic methamphetamine labs decreased over the past two years (decreasing approximately 23 percent from 2011 to 2012), law enforcement reporting throughout the United States indicates that "one-pot" labs are increasingly common. Approximately 83 percent of the domestic labs seized in 2012 produced methamphetamine in batches smaller than two ounces. Domestic lab seizures continue to be high in the Great Lakes, Southeast, and West Central regions, and low in the Northeast. Further, open source and law enforcement reporting indicates that small methamphetamine labs may be increasing in urban and suburban areas.

With regard to price and purity, from July 2007 through June 2012, the price per pure gram of methamphetamine decreased 72%, from $288.69 to $81.29, while the purity increased from 41% to 93%. While the June 2012 price data is the latest available, DEA hasn't seen anything over the last 12 months to indicate a reversal of this trend.

Question. Is it correct to assume that the increased price of the meth is affecting the decreased use?

Answer. No. From July 2007 through June 2012, the price per pure gram of Methamphetamine has actually decreased 72%, from $288.69 to $81.29. Moreover, the decline has been steady over the five years. DEA has not seen any indicators over the last 12 months that would signal a reversal of this trend.

ABUSE DETERRENT TECHNOLOGIES

Question. There are efforts underway in Congress and within the pharmaceutical manufacturing community to increase production of abuse deterrent technologies, such as non-crushables, for addictive painkillers. Can you give the Committee your opinion about these efforts and if you believe that they will help decrease abuse of these types of drugs?

Answer. DEA supports any and all efforts to reduce drug abuse, including the Administration's efforts to support research and development activities related to the development of abuse-deterrent formulations of opioid medications and other drugs with abuse potential.

In April 2011, the Administration released a plan focused on preventing prescription drug abuse, entitled "Epidemic: Responding to America's Prescription Drug Abuse Crisis." This plan said the Administration would "Expedite research, through grants, partnerships with academic institutions, and priority New Drug Application review by [the Food and Drug Administration] FDA, on the development of treatments for pain with no abuse potential as well as on the development of abuse-deterrent formulations (ADF) of opioid medications and other drugs with abuse potential." The FDA and the National Institute on Drug Abuse (NIDA) were specifically tasked with implementing this action item.

As was outlined in the FY 2013 National Drug Control Strategy "The FDA recently issued a draft guidance document that addresses research and labeling issues related to the development of abuse-deterrent formulations, thereby assisting industry in developing new formulations that promise to help reduce the prescription drug abuse epidemic in the United States."

Question. What is DEA doing currently or is requested in your budget to help support the use of these technologies?

Answer. DEA's budget (appropriated and fee funded) does not include resources to support the use of these technologies. As stated in the previous response, DEA supports any and all efforts to reduce drug abuse, including the Administration's efforts to support research and development activities related to the development of abuse-deterrent formulations of opioid medications and other drugs with abuse potential. The Administration has specifically tasked the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) with research on the development of treatments for pain with no abuse potential as well as on the development of abuse-deterrent formulations (ADF) of opioid medications and other drugs with abuse potential, through grants, partnerships with academic institutions, and the review of priority New Drug Applications.

WEDNESDAY, APRIL 17, 2013.

FEDERAL BUREAU OF PRISONS

WITNESS

CHARLES E. SAMUELS, JR., DIRECTOR, FEDERAL BUREAU OF PRISONS

OPENING STATEMENT—MR. WOLF

Mr. WOLF. The hearing will come to order.

Director Samuels, thank you for appearing today to testify on the fiscal year 2014 Federal Bureau of Prisons' budget request.

Before discussing your budget, let me express my disappointment with the lack of progress in many areas at the Bureau of Prisons.

We just saw you have 17 pilot programs supposedly. Why didn't you tell us? Is it a covert operation or why didn't you tell? What committee has done more to help Prison Industries?

Mr. SAMUELS. Excuse me. Mr. Chairman——

Mr. WOLF. Let me just give you one other. What Member has raised Prison Industries over and over?

Mr. SAMUELS. You, sir.

Mr. WOLF. And why wouldn't you come up and tell the committee?

Mr. SAMUELS. Sir, we are very——

Mr. WOLF. No. Why did you not come up and tell the committee? Let the record show there is a tremendous pause here. I am just waiting for the answer.

Mr. SAMUELS. Mr. Chairman, if——

Mr. WOLF. The question is, why did you not come up and tell the committee?

Mr. SAMUELS. We share your concern, Mr. Chairman.

Mr. WOLF. The hearing has begun. If I had not raised it, you would not have raised it before time.

I criticize Members of my own party for what they have done on the Prison Industries thing. I want hearings and testimony. And you have not even come up to tell the committee?

Mr. SAMUELS. Mr. Chairman, we are very appreciative of the authorities that were given to us through your guidance and we have been actively moving forward to utilize the repatriation authority.

Mr. WOLF. Well, I am disappointed. Let the record show I am really, really, really, really, really, really disappointed.

The committee provided you with substantial flexibility to develop and carry out pilot projects to develop and expand the FPI. I am disappointed that more has not been done energetically on prison reform. I think, quite frankly, the Bureau of Prisons has failed in the area of prison reform. We have talked about it. I am finished talking about it with regard to the Bureau of Prisons.

I am going to put in a bill, and I think Mr. Fattah is going to support me, to have a national commission to look at your whole

operation to see how it gets reformed. But I just want the record to show I have been disappointed with regard to what you all have done with regard to that.

We are going to have a commission look at options for alternatives to detention to help address the overcrowding and safety that are such challenges to the Bureau of Prisons.

Before I go on, though, I want to acknowledge and thank the BOP employees, not necessarily of the Prison Industries and not necessarily you, but the employees. They have paid the ultimate price.

In February, Correctional Officer Eric Williams was killed in the line of duty at the U.S. Penitentiary in Canaan, Pennsylvania.

More recently, BOP lost an officer in Puerto Rico in a shooting, while in Texas, another officer succumbed to a heart attack while responding to an alarm. They have our sincere condolences for those losses.

We have the highest regard for the services of all the men and women of the Bureau of Prisons and also for their families.

In your fiscal year 2014 budget request, you requested $6.9 billion in new discretionary budget authority, $156 million or a 2.3 percent increase above fiscal year 2013 before sequestration.

The current services level built into your request includes the cost of completing activation on two prisons in Alabama and New Hampshire.

You also request $181 million in new funding, $26 million for a thousand new contract beds, $53 million and 805 positions to activate new facilities in West Virginia and Mississippi, and $59 million and 1,158 positions to renovate and begin activation at the Thomson, Illinois facility.

As you know, Congress opposed the previous funding to acquire and establish the Thomson Prison. As Chairman Goodlatte underscored in his recent hearing on Justice Department inefficiency and duplication, the Thomson facility remains empty and unused.

In addition to activating new facilities, your request would add 1,000 new contract beds. To improve reentry and to reduce recidivism, you are also proposing a $43 million increase in those programs and you propose offsets for these increases, $41 million in savings from sentencing reform to increase good conduct, dependent on authorizing committee's enactment.

And I want you to tell me have you been up to talk to the authorizers about this?

Mr. SAMUELS. Mr. Chairman, I have not personally spoken to the authorizers.

Mr. WOLF. Has the attorney general been up to talk to Mr. Goodlatte?

Mr. SAMUELS. I know the Attorney General as well as the Deputy Attorney General, have moved forward with initiatives to meet with individuals to talk about the proposal to increase good conduct time.

Mr. WOLF. But have they talked to them? This is what you have done in the past and it is almost what Dietrich Bonhoeffer would call "cheap grace." You can put something in your budget and say you are really for it, but not really come up and work it like you are supposed to, like I have tried to do on the Prison Industries

over the years. I will have questions about how the bureau is coping with its continued level of overcrowding, about trends in gang recruitment, and activities in federal prisons and the prospect for furloughs and other significant adjustments in fiscal year 2014.

Before we recognize you to testify, I would like to recognize my colleague, Mr. Fattah, for any comments he would like to make.

And before I go, let me tell you. I care about what goes on in the prisons. It is immoral to put men and women in prisons and give them no work. And that is where we are trending.

It is immoral to put men and women in prisons and have them raped. I just got a letter from a man who was raped in a prison. It took years to get Senator Kennedy and Bobby Scott and Senator Sessions to put in that language with regard to prison rape.

And so what we are seeing is not good. It is not good for the country. It is not good for the people that are there. It is not good for their families. And it really has to be dealt with.

With that, I would recognize Mr. Fattah.

OPENING STATEMENT—MR. FATTAH

Mr. FATTAH. Thank you, Mr. Chairman.

And the chairman is correct. We have agreed and our staffs are working through language having to do with a national commission to look at incarceration rates in our country and not just the federal system but the state systems.

There is some good news in some of the states through an effort funded through this committee on justice reinvestment. I know in Pennsylvania, we have actually seen a decrease of incarcerated adults.

And this has happened in more than a dozen states where people have taken a holistic look at how to be a little bit smarter on these issues because the country actually cannot afford—I mean, $6.9 billion, this is roughly the same number we are going to invest in our National Science Foundation efforts, right, while a little teeny country like Singapore is going to out-invest us in their National Science Foundation even though they have got less than five million people there and we got 300 million here.

We spend a lot of money on imprisoning people. And, you know, the real issue is is that in your testimony, you speak of Eric Williams who was a prison guard in Pennsylvania who was killed. In today's papers, there is another Eric Williams. He has been arrested for shooting the prosecutor and his wife in Texas, right? And these are two separate people and one was trying to do public service. The other obviously was engaged potentially in a very horrendous act.

We have got to get more of our young people headed in the right direction. And we know something about incarceration. We know empirically, the facts show it, that the younger they are when they go in, the more they, you know, are going to be engaged in the system for a longer period of time for more and more violent activities because the prison becomes somewhat of a college education for people involved in criminal activity.

And so if 99 percent of them are going to be released and all we are going to do is manufacture more violent criminals in that process, we are not doing our taxpayers a great service.

And the chairman's frustration around industry is just one part of this because, yes, people need work, but one of the things we know is that the educational attainment rate of your prisoners is very low and we know that access to other kinds of services, whether anger management or drug treatment, you know, the country has been moving to be tougher on crime, it has not worked exactly, I think, the way we thought it might work out. So now we are going to see if we can be smarter about it.

So we welcome you here today and we look forward to your testimony.

Mr. WOLF. Pursuant to the authority granted in Section 191 of Title 2 of the United States Code in Clause 2(m)2 of House Rule XI, today's witness will be sworn in before testifying.

Please rise and raise your right hand.

[Witness sworn.]

Mr. WOLF. Thank you.

Let the record reflect that the witness answered in the affirmative.

Mr. Director, please summarize your remarks. Your written statement will be in the record. You may proceed.

OPENING STATEMENT—DIRECTOR SAMUELS

Mr. SAMUELS. Good morning, Chairman Wolf, Ranking Member Fattah, and Members of the subcommittee.

I appreciate you inviting me here to speak about the Bureau of Prisons, but first let me thank you for your support of the bureau.

You have consistently shown your concern for our need to operate safe and secure prisons and to assist inmates become law-abiding citizens, a crucial part of our public safety mission.

I must begin by acknowledging the recent tragedies we experienced when two of our staff members were killed. Officer Eric Williams was murdered by an inmate at the United States Penitentiary in Canaan, Pennsylvania. And Lieutenant Osvaldo Albarati was shot and killed on his way home from work at the Metropolitan Detention Center in Guaynabo, Puerto Rico. These are two of the saddest moments in my 25-year career.

As you can see, it has been a challenging time for our agency. We are doing everything possible with existing resources to effectively manage more than 218,000 inmates. Many of these individuals have violent tendencies and extensive criminal histories.

Our prisons are crowded. System-wide, we are at 37 percent overcapacity and at high and medium security institutions, the situation is worse.

Most concerning to me is our level of staffing. Officer Eric Williams was alone in a housing unit with 120 high-security inmates the night he was killed. This is typical of our facilities around the country.

Over the years, the growth of the inmate population has outpaced increases in staffing. Research confirms that we are in a perilous situation. As crowding and the inmate-to-staff ratio increase, so does violence in prisons.

And to make matters worse, crowded prisons with too few staff make it hard to provide inmate programs like occupational and vocational training, education, and cognitive behavioral treatment.

Without these programs, inmates do not gain the skills, training, and treatment they need to become law-abiding citizens. The result is that more inmates return to the life of crime endangering our communities.

The substantial budget outlays required to sustain the federal prison population are overwhelming the Department of Justice and come at the cost of other important public safety initiatives.

The Government Accountability Office recently reported the Bureau of Prisons has extremely limited control over the size of the inmate population. We have no control at the front end regarding the number of offenders who are prosecuted or the length of their sentences. And there are only minimal opportunities for any adjustments at the back end.

This is one of the reasons I am so grateful to you, Mr. Chairman, for allowing the Department of Justice to transfer funds to the Bureau of Prisons this year. The reprogramming of up to $150 million allowed us to keep all institution staff on the job. Without these funds, furloughs would have occurred and it would have been difficult to manage our institutions.

Let me share with you some of our recent accomplishments.

In August of 2012, we began the Pepper Spray Pilot Program and this year, we took steps to expand the pilot by issuing pepper spray to staff in all high-security institutions.

In addition, more inmates are participating in residential drug abuse treatment programs and the wait lists are shorter. This program helps us to manage crowding by enabling inmates to earn more time off of their sentences and enhance public safety by better preparing inmates to live crime and drug free.

Federal Prison Industries, one of the most important inmate reentry programs, is making good use of the repatriation authorities provided through the fiscal year 2012 appropriations bill.

There are ten active pilot projects underway and 17 more have been approved and are being developed.

Chairman Wolf, the President's budget request for fiscal year 2014 is $6.8 billion for the Bureau of Prisons' salaries and expenses account and $105 million for the buildings and facilities account. These funding levels will allow the bureau to fulfill its mission.

Mr. Chairman, this concludes my formal statement. I thank you and Mr. Fattah and Members of the subcommittee for your continued support of our agency. I look forward to working with you and the committee on this request and would be happy to answer any questions.

[The information follows:]

STATEMENT OF CHARLES E. SAMUELS, JR.
DIRECTOR OF THE FEDERAL BUREAU OF PRISONS
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

FEDERAL BUREAU OF PRISONS FY 2014 BUDGET REQUEST

APRIL 17, 2013

Good morning, Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee. I am pleased to appear before you today to discuss the President's Fiscal Year (FY) 2014 Budget request for the Federal Bureau of Prisons (BOP).

This past February the BOP suffered tragic losses with the murders of two of our staff. On February 25th, Officer Eric Williams, a Correctional Officer at the United States Penitentiary in Canaan, Pennsylvania, was working in a housing unit when he was stabbed to death by an inmate. The death of Officer Williams reminds all of us of the risks our staff take every day on behalf of the American people are dangerous. Every day when our staff walk into our institutions they willingly put their lives on the line to protect society, one another, and inmates in their care. On February 26th, Lieutenant Osvaldo Albarati was shot and killed while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico. We do not know yet who took the life of Lt. Albarati, but we hope that the individual(s) will be held accountable for this tragedy. We will always honor the memories of Officer Williams and Lt. Albarati. The mission of the BOP is challenging. While there are many facets to our operations, the foundation for it all is the safe, secure, and orderly operation of institutions, and each and every staff member in the Bureau is critical to this mission.

The Consolidated and Further Continuing Appropriations Act, 2013, was enacted on March 26, 2013, providing full-year funding for Federal agencies. While the Act provided some relief from the sequestration budget reductions of over $330 million for the BOP that became effective on March 1, BOP continues to confront operational challenges. While we recognize we need to take action to absorb these deep cuts, our actions must not threaten the life and safety of our staff, surrounding communities, and inmates. Therefore, the Attorney General used his limited authorities to transfer and allocate existing funds from elsewhere within the Department to provide up to $150 million to the BOP to avoid furloughing correctional workers at our prison institutions. Absent this intervention, we faced the need to furlough 36,600 from Federal prisons around the country. I would like to thank you Chairman Wolf and Congressman Fattah for your support of this action.

The Department's actions do not avoid the difficulties of sequester—they only postpone furloughs through the end of the fiscal year. We have already implemented extensive cuts to travel, training, contracts, and other areas of spending in order to maintain our mission priorities. The BOP cannot control the number of inmates sentenced to prison. In effect, the bulk of BOP's expenses are essential, which leaves the Bureau with extremely limited flexibility.

Our mission is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. As the Nation's largest corrections system, the Bureau is responsible for the incarceration of almost 218,000 inmates. Currently, the Bureau confines more than 176,000 inmates in 119 facilities that collectively were designed to house only 128,700 individuals. More than 19 percent of Federal inmates are housed in privately operated prisons, residential reentry centers, and local jails.

The increasing inmate population poses an ongoing challenge for our agency. In FY 2012, the inmate population increased by 919 inmates and by the end of FY 2014 the Bureau expects an additional increase of 5,400 inmates. System-wide, the Bureau is operating at 37 percent over rated capacity. Crowding is of special concern at higher security facilities, with 54 percent crowding at high security facilities and 44 percent at medium security facilities. We believe the inmate population will continue to increase for the foreseeable future, and we continue to take a variety of steps to mitigate the effects of crowding in our facilities. Safety is always a top priority, and we use all available resources to ensure our institutions are secure.

FY 2014 Budget Request

The President's FY 2014 Budget for the BOP is $6.831 billion for the Salaries and Expenses (S&E) account. For Buildings and Facilities (B&F), $105.2 million is requested, and a rescission of $30 million in prior years' new construction balances is proposed.

The BOP's highest priorities continue to be:

- Ensuring the safety of staff, inmates, and surrounding communities;
- Increasing on-board staffing at BOP correctional institutions;
- Adding bedspace to reduce inmate crowding to help prevent violence in prisons;
- Maintaining existing institutions in an adequate state of repair;
- Maximizing the use of inmate reentry programs such as education and drug treatment in order to reduce recidivism; and
- Seeking long-term strategies to control population growth.

S&E Program Changes

The budget request includes $166.3 million in program enhancements to: begin the activation process for three institutions, the Federal Correctional Institution (FCI) at Hazelton, West Virginia; United States Penitentiary (USP) Yazoo City, Mississippi; and Administrative USP Thomson, Illinois. Resources are also requested to expand residential drug abuse treatment programs; to acquire 1,000 private contract beds, and to increase current reentry and recidivism reducing programs.

Also included, are $100.7 million in offsets: $50 million for renegotiated medical contracts; $41 million for a proposed legislative initiative, which, if passed, would allow

additional Good Conduct Time credit for inmates; $4.2 million for information technology savings; and $5.5 million for administrative efficiencies. The inmate population is projected to continue to increase for the foreseeable future. As such, the BOP continues to require increased resources to provide for safe inmate incarceration and care, and the safety of BOP staff and surrounding communities, which is why the requested funding is vital.

B&F Budget Request

For FY 2014, a total of $105.2 million is requested for the B&F appropriation. Additionally, a rescission of $30 million in prior years' New Construction unobligated balances is proposed. The rescission reduces funding from an acquired facility project and reduces four partially funded projects planned for Leavenworth, KS; Letcher County, KY; Forrest City, AR; and El Reno, OK. The proposed rescission will leave $500,000 or less in available funding for the four partially funded projects. The request also includes $15 million in Modernization and Repair (M&R) funding to renovate and repair the Thomson, Illinois facility.

With the continued inmate growth and age of existing prisons, the BOP allocates M&R funds primarily for emergencies as major infrastructure and life safety systems begin to fail and to address a limited number of high priority major projects, annually. About 30 percent of BOP's 119 institutions are 50 years old or older. The aging and failing infrastructure at these locations adds to the challenge of maintaining our Federal prisons.

The Federal Inmate Population

The increasing inmate population poses an ongoing challenge for our agency. In FY 2012, the inmate population increased by 919 net new inmates and an additional 5,400 inmates are expected by the end of FY 2014. This growth is anticipated based on an analysis of trends in Federal prosecutions and sentencing. Drug offenders comprise the largest single offender group admitted to Federal prison and sentences for drug offenses are much longer than those for most other offense categories. While the BOP is not experiencing the dramatic net population increases of 10,000 to 11,400 inmates per year that occurred from 1998 to 2001, the net increases and workload are still significant.

The BOP is responsible for the incarceration of over 218,000 inmates. Approximately 81 percent of the inmate population is confined in Bureau-operated institutions, while 19 percent are under contract care, primarily in privately operated prisons and residential reentry centers. Most of the inmates in BOP facilities (50 percent) are serving sentences for drug trafficking offenses. The remainder of the population includes inmates convicted of weapons offenses, immigration offenses, violent offenses, fraud and other property offenses, and sex offenses. The average sentence length for inmates in BOP custody is 9 ½ years. Approximately 26 percent of the Federal inmate population is comprised of non-U.S. citizens.

It is particularly challenging to manage the Federal prisoner population at higher security levels. The combined inmate population confined in medium and high security facilities represents 46 percent of the inmate population housed in BOP facilities. It is important to note that at the medium security level, about 66 percent of the inmates are drug offenders or weapon

offenders, approximately 75 percent have a history of violence, 41 percent have been sanctioned for violating prison rules, and half of the inmates in this population have sentences in excess of eight years. At the high security level, more than 69 percent of the inmates are drug offenders, weapons offenders, or robbers, another 10 percent have been convicted of murder, aggravated assault, or kidnapping, and half of the inmates in this population have sentences in excess of 10 years.

Moreover, 71 percent of high security inmates have been sanctioned for violating prison rules, and more than 90 percent of high security inmates have a history of violence. One out of every four inmates at high security institutions is gang affiliated. There is a much higher incidence of serious assaults by inmates on staff at medium and high security institutions than at the lower security level facilities. In fact, the murder at USP Canaan is a tragic example of this. In FY 2012, 85 percent of serious assaults against staff occurred at medium and high security institutions--63 percent of serious assaults on staff occurring at high security institutions, and 22 percent at medium security institutions. Fewer assaults occur at low and minimum security institution that house inmates who are less prone to violence.

Institution Crowding

The BOP confines over 176,000 inmates in Bureau-operated facilities, which have a total rated capacity of just under 129,000 beds. Crowding is of special concern at higher security facilities, including penitentiaries (operating at 54 percent over capacity) and medium security institutions (operating at 44 percent over capacity). These facilities confine a higher number of inmates who are prone to violence than lower security facilities. The BOP has managed overcrowding by double and triple bunking inmates throughout the system, or housing them in space not originally designed for inmate housing, such as television rooms, open bays, program space, etc.

In addition to double and triple bunking, to manage crowding, we have improved the architectural design of our newer facilities and have taken advantage of improved technologies in security measures such as perimeter security systems, surveillance cameras, and equipment to monitor communications. These technologies support BOP employees' ability to provide inmates the supervision they need in order to maintain security and safety in our institutions. We have also enhanced population management and inmate supervision strategies in areas such as classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and controlled movement. While we continue to look for ways to address crowding in our facilities, the challenges continue as we face continued growth in the inmate population.

The BOP performed a rigorous analysis of the effects of crowding and staffing on inmate rates of violence, and found a direct relationship between crowding, staffing, and institution safety. Data was used from all low, medium, and high security BOP facilities for male inmates for the period July 1996 through December 2004. We accounted for a variety of factors known to influence the rate of violence and, in this way, were able to isolate and review the impact that crowding and the inmate-to-staff ratio had on serious assaults. This study found that increases in both the inmate-to-staff ratio and the rate of crowding at an institution (the number of inmates relative to the institution's rated capacity) are related to increases in the rate of serious inmate

assaults. An increase of one in an institution's inmate-to-custody-staff ratio increases the prison's annual serious assault rate by approximately 4.5 per 5,000 inmates.

The BOP employs many management interventions in an attempt to prevent and suppress inmate violence. These interventions are resource-intensive and include: paying overtime to increase the number of custody staff available to perform security duties, utilizing staff from program areas (detracting from inmate programs and other vital institution functions), locking down an institution after a serious incident and performing intensive interviews to identify perpetrators and causal factors, performing comprehensive searches to eliminate weapons and other dangerous contraband, and designating and housing inmates in Special Management Units (SMU). SMU inmates consist of sentenced offenders who participated in or had a leadership role in geographical group/gang-related activity, or those who have a history of disruptive, disciplinary and/or misconduct infractions. The BOP designates inmates to SMUs because greater management of their interaction is necessary to ensure the safety, security, and orderly operation of BOP facilities, and protection of the public. SMU inmates require a more restrictive confinement than general population inmates. The BOP currently has three SMU locations.

Prison Rape Elimination Act (PREA) Implementation

The Attorney General's National Standards to Prevent, Detect, and Respond to Prison Rape became effective on August 20, 2012. Therefore, as required by the statute, BOP Program Statements to implement specific PREA requirements were published on August 20, 2012. The majority of the PREA requirements, including zero tolerance of sexual abuse and sexual harassment and the focus on training, detection, prevention, and response, reflect long standing BOP policies and practices in this area. The BOP has appointed a National PREA Coordinator, and has points of contact in all regional offices and institutions.

The BOP has provided several video conferences and on-line training sessions with staff to discuss PREA implementation. The National Coordinator has established a PREA page on our internal website so that staff will have a centralized source for resources and training. We also made PREA a focus of our National Warden's Training, holding break-out sessions on specific regulation requirements. In addition, investigative staff have received specialized training and all staff receive PREA training through our annual training process, and we are developing specialized training for certain disciplines, such as medical staff. The BOP contacted contract facilities to let them know of the PREA requirements, and has already added PREA compliance as a contract requirement. The first audits of PREA compliance will be held beginning August 2013. The BOP is preparing for this process, and anticipates being found fully compliant.

Inmate Reentry

We are committed to both parts of the BOP's mission – security and reentry. The Attorney General has made clear his strong commitment to reentry as a critical component of public safety. Maintaining high levels of security and ensuring inmates are actively participating in evidence-based reentry programs are equally important to ensure the safety of our staff and to

serve and protect society. It's our philosophy that "reentry begins on the day of incarceration," and we work with inmates to address identified skill deficiencies and weaknesses, provide appropriate treatment programs, and assist with preparation for reintegration. Over the past few years we have made great strides in enhancing collaboration both inside and outside our agency to ensure we are providing offenders the best opportunities for success once back in the community.

Our agency has no control over the number of inmates who come into Federal custody, the length of their sentences, or the skill deficits they bring with them. We do have control, however, over the programs in which inmates can participate while they are incarcerated; and we can thereby affect how inmates leave our custody and return to the community. Almost all Federal inmates will be released back to the community at some point. Each year, over 45,000 Federal inmates return to our communities, a number that will continue to increase as the inmate population grows. Most need job skills, vocational training, education, counseling, and other assistance such as drug abuse treatment, anger management, parenting skills, and linkage to community resources for continuity of care if they are to successfully reenter society.

Federal prisons offer a variety of inmate programs to address reentry needs, including work, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, release preparation, and other programs that impart essential life skills. We also provide other structured activities designed to teach inmates productive ways to use their time.

Rigorous research has demonstrated that inmates who participate in the Federal Prison Industries (FPI) program are 24 percent less likely to recidivate than similar non-participating inmates and inmates who participate in vocational or occupational training are 33 percent less likely to recidivate. Inmates who participate in education programs are 16 percent less likely to recidivate and inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to relapse to drug use within 3 years after release[1]. Also, inmates who participate in work programs and vocational training are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other inmates.

In 2001, the Washington State Institute for Public Policy evaluated the costs and benefits

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1 Federal Bureau of Prisons (1985). PREP: Post Release Employment Project Interim Report, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Federal Bureau of Prisons (2000). TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part I, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Harer, M. D. (1995). Prison Education Program Participation and Recidivism: A Test of the Normalization Hypothesis. Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Saylor, W. G. and Gaes, G. G. (1997). PREP: Training Inmates Through Industrial Work Participation and Vocational and Apprenticeship Instruction. Corrections Management Quarterly, 1(2).

of a variety of correctional skills-building programs, and this study was recently updated. The study examined program costs; the benefit of reducing recidivism by lowering costs for arrest, conviction, incarceration, and supervision; and the benefit by avoiding crime victimization.

The study was based on validated evaluations of crime prevention programs, including the BOP's assessment of our industrial work and vocational training programs (the Post Release Employment Project study) and our evaluation of the Residential Drug Abuse Treatment program (the TRIAD study). The "benefit" is the dollar value of criminal justice system and victim costs avoided by reducing recidivism, and the "cost" is the funding required to operate the correctional program. The benefit-to-cost ratio of residential drug abuse treatment is as much as $3.38 for each dollar invested in the program; for adult basic education, the benefit is as much as $19.00; for correctional industries, the benefit is as much as $4.97; and for vocational training, the benefit is as much as $13.01. The study clearly indicates these inmate programs result in significant cost savings through reduced recidivism, and their expansion is important to public safety[2].

Substance Abuse Treatment

The BOP is mandated by statute (the Violent Crime Control and Law Enforcement Act of 1994) to provide drug abuse treatment to inmates. Our substance abuse strategy includes a required drug education course, non-residential drug abuse treatment, residential drug abuse treatment, and community transition treatment.

Drug abuse education is available in all BOP facilities. Drug abuse education provides inmates with information on the relationship between drugs and crime and the impact of drug use on the individual, his or her family, and the community. Drug abuse education is designed to motivate appropriate offenders to participate in nonresidential or residential drug abuse treatment, as needed.

Non-residential drug abuse treatment is also available in every BOP institution. Specific offenders whom we target for non-residential treatment services include:

- inmates with a relatively minor or low-level substance abuse impairment;
- inmates with a more serious drug use disorder whose sentence does not allow sufficient time to complete the residential drug abuse treatment program;
- inmates with longer sentences who are in need of and are awaiting placement in the residential drug abuse treatment program;
- inmates identified with a drug use history who did not participate in residential drug abuse treatment and are preparing for community transition; and
- inmates who completed the unit-based component of the residential drug abuse treatment program and are required to continue treatment once a month for twelve months or until

2 Aos, Steve, Phipps, P., Barnoski, R. and Lieb, R. (2001) The Comparative Costs and Benefits of Programs to Reduce Crime. Washington State Institute for Public Policy, as updated April 2012.

placement in a residential reentry center, where they will receive transitional drug abuse treatment.

The Residential Drug Abuse Treatment Program (RDAP) offers 500 hours of intensive cognitive-behavioral treatment services delivered within the context of a modified therapeutic community model. Participants in the residential drug abuse treatment program live together in a unit reserved for drug abuse treatment in order to minimize any negative effects of interaction with the general inmate population. In the initial phase of the program, participants complete a psycho-social assessment and an individualized treatment plan is developed, targeting each offender's primary treatment needs. During the course of the 9-12 month program, participants are engaged in interactive treatment groups and meetings which address key recovery skills, including rational thinking, living a pro-social lifestyle, healthy interpersonal relationships, and relapse prevention skills. Residential drug abuse treatment is provided toward the end of the sentence in order to maximize its positive impact on soon-to-be-released inmates.

It is important to note that under our statutory mandate, the BOP is required to provide residential drug abuse treatment to all inmates who volunteer and are eligible for the program. In FY 2007 and FY 2008, the BOP could not meet this requirement due to insufficient funding for program expansion; however from FY 2009 through FY 2012, the BOP was able to provide residential drug abuse treatment to 100 percent of the Federal inmate population eligible for treatment.

Because certain non-violent offenders who successfully complete all components of RDAP are eligible for an incentive of up to one year off their sentence, inmates are strongly motivated to participate. Due to limited capacity, however, inmates receive, on average, only a nine month sentence reduction. The FY 2014 budget request of $15 million would fund an expansion of RDAP. An expansion of the drug treatment capacity will allow more inmates to participate in the program and earn an early release, thereby reducing crowding and costs. Specifically, such expansion will allow the BOP to treat all eligible inmates and extend the sentence reductions for those who qualify from the current nine months average to the full 12 months allowed by statute.

RDAP in the BOP includes a community transition treatment component to help ensure a seamless transition from the institution to the community. Inmates are monitored and managed across systems by BOP residential reentry management staff and community treatment staff. As part of the community transition, the BOP provides a treatment summary to the community-based treatment provider who will treat the inmate while they reside in the residential reentry center or home confinement. Upon release from BOP custody, a treatment summary from the institution component of RDAP and a termination report from the community treatment provider are forwarded to the supervising U.S. Probation Officer. Participants in community transition drug abuse treatment typically continue treatment during their period of supervised release.

Specific Pro-Social Values Programs

Based on the proven success of the residential substance abuse treatment program, we have implemented additional cognitive-behavioral programs to address the needs of other segments of the inmate population (including younger offenders and high-security inmates). These programs focus on inmates' emotional and behavioral responses to difficult situations and emphasize life skills and the development of pro-social values, respect for self and others, responsibility for personal actions, and tolerance. Many of these programs have already been found to significantly reduce inmates' involvement in institution misconduct. The positive relationship between institution conduct and post-release success makes us hopeful about the ability of these programs to reduce recidivism.

Inmate Work Programs

Prison work programs teach inmates occupational skills and instill in offenders sound and lasting work habits and a work ethic. All sentenced inmates in Federal correctional institutions are required to work (with the exception of those who for security or medical reasons are unable to do so). Most inmates are assigned to an institution job such as food service worker, orderly, painter, warehouse worker, or groundskeeper.

In addition to these BOP work assignments, Federal Prison Industries (FPI or trade name UNICOR) is one of the BOP's most important correctional programs because it has been proven to substantially reduce recidivism. Approximately 13,100 inmates work in FPI. FPI provides inmates the opportunity to gain marketable work skills and a general work ethic -- both of which can lead to viable, sustained employment upon release. It also keeps inmates productively occupied; inmates who participate in FPI are substantially less likely to engage in misconduct. At present, FPI reaches only 8 percent of the inmate population housed in BOP facilities, which is a significant decrease from previous years. For example, in 1988 FPI employed 33 percent of the inmate population. This decrease is primarily attributable to various provisions in Department of Defense authorization bills and appropriations bills that have weakened FPI's standing in the Federal procurement process.

These factors have resulted in declining sales and have contributed to FPI accumulating losses of more than $100 million in the last four years. We have continued to undertake extensive cost containing and downsizing measures, including the closure of additional factories and staffing reductions. In the meantime, several steps have been taken to increase inmate employment, such as increasing part time employment and focusing on those inmates who are veterans or who are within their last two years of release.

We are very grateful for the additional authorities provided in the FY 2012 appropriation and are working on the new programs. Regarding the authority granted to FPI to repatriate manufacturing work, FPI has moved expeditiously to secure new business opportunities that are currently or would have otherwise been manufactured outside of the United States. FPI's Board of Directors has approved 17 pilot proposals to date, 10 of which are at varying stages of development. There are currently more than 100 inmates involved in repatriation projects thus far. Should all 10 of the active projects become fully on line, there is the potential to employ

between 300 and 500 additional inmates. These projects include: interior and exterior signage, LED lighting, medical scrubs, solar panels, linens and blankets, lumber wraps, butcher frocks, face hoods, and concealable vest carriers. The FPI Board of Directors previously approved baseball caps, bags, and sacks as pilot repatriation projects, but we have so far been unable to identify a potential vendor. Most recently, FPI sought Board approval to make embroidered caps for Federal government customers (excluding Department of Defense) that would otherwise be produced outside of the United States.

In addition to the approved pilots, more than 17 additional potential opportunities are being evaluated for Board approval. FPI is actively seeking new business opportunities and has created an in-house group to focus exclusively on business development and to address the unique challenges of operating the FPI program.

Regarding the authority granted to FPI to participate in the Prison Industries Enhancement Certification Program (PIECP), FPI has submitted its application to the Bureau of Justice Administration (BJA), and we are expecting to receive approval in the near future. FPI looks forward to participating in the program. FPI will pursue opportunities to utilize this authority once certification is received by BJA.

Although it is necessary that much of FPI's business remain in its supply of goods to the Federal government, sales to Federal government customers have declined in recent years. Thus, the repatriation and PIECP authorities will assist in our efforts to maintain or increase our inmate employment levels during these challenging times, and may potentially help us avoid closing additional factories. For instance, we recently entered into an agreement with a company to manufacture photovoltaic solar panels under the repatriation authority that will allow us to re-open the factory at FCI Otisville. This will employ approximately 65 inmates in the near future.

Education, Vocational Training, and Occupational Training

The BOP offers a variety of programs for inmates to enhance their education and to acquire skills to help them obtain employment after release. Institutions offer literacy classes, English as a Second Language, adult continuing education, parenting classes, recreation activities, wellness education, and library services. At the close of FY 2012, 35 percent of the Bureau's designated population was enrolled in one or more Education or Recreation programs.

With few exceptions, inmates who do not have a high school diploma or a General Educational Development (GED) certificate must participate in the literacy program for a minimum of 240 hours or until they obtain a GED. In FY 2012, 5,902 inmates earned their GED. The English as a Second Language program enables inmates with limited proficiency in English to improve their English language skills. Also, a number of institutions offer inmates the opportunity to enroll in and pay for more traditional college courses that could lead to a bachelor's degree.

We also facilitate vocational training and occupationally oriented higher education programs. In FY 2012, the inmate population completed 19,694 such programs. Occupational and vocational training programs are based on the needs of the specific institution's inmate population, general labor market conditions, and institution labor force needs. On-the-job

training is afforded to inmates through formal apprenticeship programs, institution job assignments, and work in the FPI program.

Life Connections

The Life Connections Program is a residential multi-faith-based program that provides the opportunity for inmates to deepen their spiritual life and assist in their ability to successfully reintegrate following release from prison. Life Connections programs are currently operating at FCI Petersburg, USP Leavenworth, FCI Milan, USP Terre Haute, and the Federal Medical Center Carswell.

Inmates who are not eligible for the residential Life Connections Program may volunteer to participate in a modified version of the program called Threshold. This is a non-residential spiritual/values based program taught by chaplains and volunteers over a six to nine month time period. This program is designed to strengthen inmate community re-entry. Currently, 80 institutions are offering Threshold in FY 2013.

The Second Chance Act

The Second Chance Act of 2007 required several changes to BOP policies and practices. The BOP is committed to providing opportunities for offenders to prepare for a successful reentry to the community and has made significant progress toward meeting the mandates of the Second Chance Act.

Inmate Skills Development Initiative

The Inmate Skills Development initiative refers to the BOP's targeted efforts to unify our inmate programs and services into a comprehensive reentry strategy. The three principles of the Inmate Skills Development initiative are: (1) inmate participation in programs must be linked to the development of relevant inmate reentry skills; (2) inmates should acquire or improve a skill identified through a comprehensive assessment, rather than simply completing a program; and (3) resources are allocated to target inmates with a high risk for reentry failure.

The initiative includes a comprehensive assessment of inmates' strengths and deficiencies. This critical information is updated throughout each inmate's incarceration and is provided to probation officers as inmates get close to their release from prison to assist in the community reentry plan. As part of this initiative, program managers are collaborating and developing partnerships with a number of governmental and private sector agencies to assist with inmate reentry.

Specific Release Preparation Efforts

In addition to the inmate programs described above, the BOP provides a Release Preparation Program in which inmates become involved toward the end of their sentence. The program includes classes in resume writing, job seeking, and job retention skills. The program

also includes presentations by officials from community-based organizations that help ex-inmates find employment and training opportunities after release from prison.

Release preparation includes a number of inmate transition services provided at our institutions, such as mock job fairs where inmates learn job interview techniques and community recruiters learn of the skills available among inmates. At mock job fairs, qualified inmates are afforded the opportunity to apply for jobs with companies that have job openings. Our facilities also help inmates prepare release portfolios, including a resume, education and training certificates, diplomas, education transcripts, and other significant documents needed for a successful job interview.

The BOP has established employment resource centers at most Federal prisons to assist inmates with creating release folders to use in job searches; soliciting job leads from companies that have participated in mock job fairs; identifying other potential job openings; and identifying points of contact for information on employment references, job training, and educational programs.

We use Residential Reentry Centers (RRCs) -- also known as community corrections centers or halfway houses -- to place inmates in the community prior to their release from custody in order to help them adjust to life in the community and find suitable post-release employment. These centers provide a structured, supervised environment and support in job placement, counseling, and other services. As part of this community-based programming, some inmates are also placed on home confinement (statutorily limited to 10 percent of an inmate's sentence). They are at home under strict schedules with telephonic or electronic monitoring.

The BOP is implementing a risk-reduction model in RRC programming. Research demonstrates that RRCs are most effective at reducing recidivism for higher-risk inmates, especially those who have demonstrated a willingness to participate in education, vocational training, and treatment programs while they are in BOP institutions. The risk-reduction model recognizes that lower-risk inmates may need fewer RRC services, shorter RRC placements, and instead may transition more rapidly to home confinement; some may be placed directly in home confinement with no time in an RRC. In contrast, higher-risk inmates who have shown they are ready to address their crime-producing behaviors may need longer RRC stays. These changes will not decrease the overall number of inmates who will be placed in RRCs. We anticipate these changes will result in greater numbers of placements in community-based programs and a more effective use of our limited RRC resources.

Preventing Radicalization in Federal Prisons

The BOP takes very seriously the obligation to guard against the spread of terrorism and extremist ideologies within Federal prisons, and has taken substantial steps to address this concern. BOP pursues a policy of containment for the most significant terrorist offenders, using a variety of management controls, including monitoring inmates' social communications; and restricting prisoners' housing and movement. In addition, BOP monitors and records telephonic communication of inmates with a history of, or nexus to, terrorism and shares any relevant information with the FBI, including its National Joint Terrorism Task Force (NJTTF), and other

agencies. BOP operates a dedicated Counter Terrorism Unit that coordinates with the FBI and others. BOP also works closely with the NJTTF to share information and intelligence about these inmates. BOP and FBI jointly developed the Correctional Intelligence Initiative (CII), a national project to detect, deter, and disrupt radicalization and recruiting of inmates in Federal, state, and local correctional agencies. Through its work, the project also helps to develop best practices and coordinate procedures to ensure outside extremist and terrorist groups are universally denied access to prison populations.

Conclusion

Chairman Wolf, this concludes my formal statement. Again, I thank you, Mr. Fattah, and Members of the Subcommittee for your continued support of our agency. As I have indicated in my testimony, the BOP faces a number of challenges as the inmate population continues to grow. For many years now, the BOP has stretched resources, streamlined operations, and constrained costs to operate as efficiently and effectively as possible.

The FY 2014 President's Request will allow us to add bedspace for the growing inmate population and expand drug abuse treatment and other inmate programs to better prepare inmates for transition back to the community. I look forward to working with you and the Committee on this request, and would be happy to answer any questions.

Mr. WOLF. Thank you.

SEQUESTRATION

On February 1, 2013, Attorney General Holder warned Senator Mikulski about the adverse impacts of sequestration on the activation of new prisons, furloughs, safety, and security at Bureau of Prison facilities.

After the President's sequestration order was submitted, we received a request to reprogram funds to prevent furloughing prison security officers. In order to preserve the safety of BOP personnel and inmates, we approved the request.

Now, by approving that request, we took how much away from the FBI?

Mr. SAMUELS. Mr. Chairman, I can't speak on the specifics of the dollar amount that was taken from the FBI. Staff reporting less than $90 million.

Mr. WOLF. Ninety? So we took $90 million from the FBI and gave it to the Bureau of Prisons, so you don't have a RIF?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. And how much did Thomson Prison cost?

Mr. SAMUELS. Mr. Chairman, the Thomson facility cost $165 million.

Mr. WOLF. So the Thomson Prison which violated the procedures that we have up here violated procedures of both political parties. First time it has ever been done. The career people tell me down there they were all opposed to it.

I am not going to ask you if you were opposed to it because I do not want to put you in a difficult spot with your boss. But everyone I spoke to thought it was a bad idea.

So the cost of Thomson was $160 million. We reprogrammed it so you could have $150 million to keep people on. So if you had not bought the Thomson Prison, you would have $160 million more, correct?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. And so if you had had $160 million, you would not need the money for the reprogramming because the need was $150 million?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. I mean, I do not know if anybody else understands that, but you violated a procedure. We did approve the reprogramming, but now you are going to be coming up and asking for reprogramming to help the FBI to stay alive so there are not RIFs and furloughs there.

Do you anticipate having any furlough of other additional personnel for the rest of this fiscal year?

Mr. SAMUELS. We don't anticipate the numbers to be significant within the bureau which, again, we appreciate the support that you provided and others.

Mr. FATTAH. If the chairman would yield. I guess the people who would normally complain about earmarks would not complain that this prison was done in the way it was done. But it is essentially an earmark totally outside of the process to make this purchase.

So I wonder where the complaints are about that. But I guess when it comes from the executive branch, it is fine.

Mr. WOLF. The gentleman is right. I mean, it is an earmark. Had it been done over on the House, it would have violated the law.

Most of the people in my district, there are many people that work for the Bureau of Prisons. When I would be out moving through my district, people would tell me that they thought it was a bad idea. Apparently the team went over to the White House and argued against doing it and it was done.

And I think by doing that, you have poisoned the water certainly with me. You have poisoned the water. In fact, some people told me I was making a bad mistake to reprogram the money and I said just because I think the Attorney General and the Director of the Bureau of Prisons did something that I thought was inappropriate, it would be inappropriate for me to then say, okay, in order to get back, I am going to allow RIFs and furloughs to take place in an agency that I think needs resources.

So I signed the reprogramming, but I am finished with you guys, finished, over. I never want to see the Bureau of Prisons. I do not want to see the Prison Industries coming. We are going to put this commission together. We are going to come out with some of the boldest creative ideas, as Mr. Fattah said.

The people from Pennsylvania were by to see me last week. It was a legislator from the Harrisburg area. But we are finished. We are going to come out with ideas and I am going to push these ideas. And I do not care what you think and I do not care what Holder thinks and I do not care what this Administration thinks.

But you all have lost me and if there is any question about that, I just want it to be on the record. I thought what you did on Thomson was sneaky. I think what you have done with regard to these pilot programs is sneaky and I think you have been deficient in many other areas.

MURDER OF OFFICER WILLIAMS

The death of Officer Williams at the Canaan Penitentiary was a tragedy that must not be repeated.

What policy and management changes has the bureau adopted in light of this and what elements of the budget request tied directly to the safety of correctional officers?

Mr. SAMUELS. Mr. Chairman, in regards to the murder of Officer Williams, we have done everything internally to assess the issues that occurred surrounding the murder.

As I mentioned in my oral statement, throughout the bureau, the majority of our institutions are faced with staff working in housing units with large numbers of inmates and this is a resource issue. We are doing everything to ensure that all appropriate procedures to manage a facility are being carried out.

And as mentioned, we don't control the number of inmates who are sentenced to the bureau and we have to do everything that we can to be creative with strategic steps to ensure that we are properly managing the facilities with the resources that we have.

PEPPER SPRAY

Mr. WOLF. I raised last year in a hearing the use of pepper spray. At that time, you all were opposed to it.

What has led to your change of mind and have you notified Congressman Griffith? Morgan Griffith came up and urged us to push it. Your union supported it. Could you tell us what led you to change your mind and how broad it will be now in the Bureau of Prisons?

Mr. SAMUELS. Yes, Mr. Chairman.

Mr. WOLF. And has anybody talked to Morgan Griffith?

Mr. SAMUELS. I have not personally spoken to him, sir.

Mr. WOLF. Anybody else out there?

Mr. SAMUELS. I am not sure. Mr. Chairman, shortly after my appointment to the Bureau of Prisons, I assessed this issue. I was very well aware of your concerns and many others regarding the bureau considering the use of pepper spray. And I implemented the pilot in August of last year.

As a result of the pilot, based on what we are seeing——

Mr. WOLF. Where was the pilot done?

Mr. SAMUELS. We implemented it——

Mr. WOLF. When was it done?

Mr. SAMUELS. At several of our high-security facilities. And as a result of the pilot which has been in place since August of last year, I determined that we should expand it, which we have. We have expanded it to all high-security facilities throughout the bureau which took place March of this year.

Ultimately as we move forward with the pilot, when the pilot is finished, we are going to assess all of the data and a determination will be made to consider expanding it further.

Mr. WOLF. When will it be finished?

Mr. SAMUELS. The pilot is expected to be finished between August and September of this year.

Mr. WOLF. And how many times has pepper spray been used?

Mr. SAMUELS. The last time I checked, sir, pepper spray had been used approximately 106 times.

Mr. WOLF. And was it generally successful?

Mr. SAMUELS. Yes.

Mr. WOLF. Mr. Fattah.

OVERCROWDING

Mr. FATTAH. Thank you very much for your two decades plus service and you have, you know, an extraordinary burden obviously given the fact that you do not control the inflow of, you know, of prisoners. That is handled through the courts and you have to make due. And I understand that this overcrowding problem continues to persist.

One is I supported the chairman in the efforts in the reprogramming and even though it was taking resources from the FBI, I think it was the right decision. And I want to again publicly thank the chairman because the thousands of furloughs that would have been required in the prison systems would have made circumstances, I think, very, very problematic both for inmates and for the remaining staff that you have in these facilities.

So, you know, the fact of the matter is going forward and even though, you know, I totally agree with the chairman on the Thomson purchase, that it was handled outside of the proper way to pro-

ceed, obviously you are trying to deal with overcrowding and deal with this issue.

Well, one of the ways is to think about, you know, how to lessen the amount of incarceration which is not something you have to deal with, but part of the reason why we are going to have this commission is to look at, you know, what we have to do so that we have room in prison for violent criminals and we have some way to divert people who do not need to start on this path, you know, in terms of learning how to be better criminals, so, you know, and we have to find the happy medium here.

In some of our states through an effort funded by this subcommittee and some of the most conservative states in the country have made real progress kind of thinking through a little more clearly about who needs to be put behind bars and who do we need to find a way to make sure that they can move towards a more productive life.

And so we want to look at all of that. This commission is going to do that work and it will be good for the country and it will be good for your staff because any time you have an overcrowded situation, it is going to be unsafe, I mean, period. And, you know, it is unsafe for the inmates, unsafe for the staff, or both.

But we want to welcome you. I got your budget numbers. And, you know, you are in a business where you do not control the amount of customers that you have and, you know, we are going to do everything we can to meet your budget obligations.

And I hope that as you go forward that the chairman's concerns around Prison Industries can be more ably addressed than they have at this moment because, you know, the point is pretty clear that we need to be doing more so that when people are released that they are in a better position to go about leading a productive work life.

So I welcome you.

I do not have any questions at this time, and I would yield.

Mr. WOLF. Mr. Bonner.

Mr. BONNER. Thank you, Mr. Chairman.

And, Director, it is good to have you back before the committee.

Let's talk a little bit about the issue of overcrowding and help the committee understand, if you will, are there some areas that deal with overcrowding that we do have some control over?

The ranking member is certainly correct. You do not necessarily have direct involvement in terms of how many people are going to be sent to prison. You just have to try to manage it with the resources you are given.

But in your written testimony, I was struck by a line on page three that said 26 percent of the federal inmate population is comprised of non-U.S. citizens.

Is that an average that is consistent with previous decades? Is that high? Is that low? And tell us about that, please.

Mr. SAMUELS. Congressman Bonner, the population that you make reference to has been pretty consistent for the Bureau Prisons and that number is approximately 57,000 inmates who are in that category.

As mentioned today, I am not in the position, unlike some of my peers in corrections, the directors and secretaries of state correc-

tional systems, of being able to control through diversion programs, individuals coming into the system, as well as the number of individuals who are sentenced and their sentence length to include the deficits that many of these individuals enter into our system with.

The only authority I have as director of the Bureau of Prisons with any type of release within our system is 3621E which is our residential drug abuse program, compassionate release and home detention.

Beyond those authorities, I am limited as the director of the Bureau of Prisons to have any type of progressive stance on reducing the population.

Mr. BONNER. I understand. But I think you are in a position to help us understand not only what your limitations are, but there are other vehicles, legislative vehicles that might be available to help this if this, in fact, could be an area.

If overcrowding is an issue and 26 percent of the inmates of the 218,000 inmates, 57,000 are non-citizens, I am just trying to glean is there anything that someone else can do to address this issue or is it beyond our ability to address?

Do you happen to know how many American citizens, what percentage of American citizens, for instance, might be imprisoned in Mexico or in Brazil or in other countries?

Twenty-six percent just seems high. These are people that are obviously here illegally. The whole issue of immigration is a topic of conversation right now and they are here and maybe they should be here. Maybe if they were sent back to their home country, they would just be let out to commit other crimes.

I am not suggesting I know the answer to it. I am just trying to understand is this a part of the budgeting problem you have got because it is a pretty high percentage of people that are non-U.S. citizens that the American taxpayers are paying for. Does that make sense?

Mr. SAMUELS. Yes, sir. Congressman Bonner, I would add that for the Bureau of Prisons, one thing that we believe would be very, very beneficial to help us with our crowding would be two legislative proposals that have been presented.

The first would be allowing individuals to receive an additional seven days off of their good conduct time. Right now an inmate, for example, if they are serving a ten-year sentence, they are only receiving 47 days per year which would equate to 470 days off their sentence.

And if we were to allow these individuals to gain an additional seven days which would be 54 days per year for that example that I provided, the individual would receive 540 days off their sentence. That alone would allow us to release approximately 4,000 inmates and would help with crowding.

Mr. BONNER. And who would qualify for that if this were in effect?

Mr. SAMUELS. This would be——

Mr. BONNER. Tell me the type of inmate that would qualify for this, someone who has gone through——

Mr. SAMUELS. This would be every inmate sentenced to the Bureau of Prisons serving a sentence of a year and a day. And they

would immediately qualify based on maintaining good conduct through their term of incarceration.

Mr. BONNER. Regardless of what they were sentenced for?

Mr. SAMUELS. Yes, sir. And another legislative proposal that we support as well as the department is giving individuals who participate in evidence-based programs 60 days off their sentence not to exceed 33 percent of the term imposed.

And that would give inmates an incentive to participate in these types of programs because right now the only program that allows an inmate to receive time off their sentence is the residential drug abuse program for those inmates who qualify.

We also believe that by allowing inmates to participate in these programs it will help with the protection of the public when these individuals are released based on recidivism reduction.

INMATE PROGRAMS

Mr. BONNER. What type of programs across the spectrum are available to help rehabilitate someone who is in prison today who, unlike someone who is on death row and who may never see the outside again, but someone who is sentenced for seven years, what are the prison systems doing, federal, to help rehabilitate that person so they can come out and be a productive citizen?

Mr. SAMUELS. Congressman Bonner, I would reemphasize the support which we receive from Chairman Wolf. Our Federal Prison Industries program is our largest recidivism reduction program through work skills that are provided to inmates.

Over the years, we have lost approximately 10,000 jobs that were very crucial and beneficial for us to have these inmates participate as well as ensuring us to effectively manage these individuals within our institutions.

We also have a very active vocational and occupational training program where we encourage inmates to participate and studies have shown that recidivism reduction is also very significant there as well.

We have many cognitive behavioral treatment programs that we encourage inmates to participate in. The challenge we deal with routinely is finding a way beyond having conversations with inmates and constantly letting them know that it is important to participate but giving them an incentive beyond the value we know it would provide but some type of carrot for them to be willing to participate.

This is why we believe the legislative proposal for the inmates to earn up to 60 days off their sentence would be very, very valuable.

Mr. BONNER. Right. I understand it would be valuable in dealing with overcrowding. But in terms of the rehab programs that are available, what percentage of your inmates are actually taking advantage of the programs that are currently offered?

Mr. SAMUELS. The percentage of inmates for the different programs, it varies. And I would say on average, depending which particular program, you are looking at around 30 percent.

Mr. BONNER. Thirty percent. So 70 percent roughly of the 218,000 inmates are not participating in any type of rehab pro-

grams that would be eligible for some type of parole or getting out of prison at some time?

Mr. SAMUELS. We have inmates involved in a lot of different things where there is a nexus to recidivism reduction type programs. We are in the process of cataloguing the various programs, so it can be sporadic. But we do believe that we can increase the numbers for specific programs that deal with cognitive behavioral treatment and get more of those inmates involved.

When you talk to many of these individuals, they can have the desire, but then if they don't necessarily see where there is a benefit, they are not participating. And we can't force them to participate. We can only encourage.

Mr. BONNER. I know you cannot force them to. But as the parent of a teenager, two teenagers, if they came and told me they had made a 30 on a test, it would be hard for me to tell them they did well, that try a little harder, it might get up to 35 percent. It seems to me there is a missing piece.

I have been on this subcommittee for a few years when Mr. Fattah had the gavel, when Mr. Wolf had the gavel. I do not think there is a chair and a ranking member that have a more seamless relationship, especially a passion for something that really is not sexy work, but it is so critically important.

And if we can take a young life that made a mistake and help them get on a path and see a light at the end of the tunnel so when they get out, they do not go back and repeat their mistake. I know I am preaching to the choir. I know this is your life and your life service.

But it just seems to me to have the leadership that we have got on this committee, bipartisan, that wants to be helpful and has been helpful and then to not take advantage of that and work with them, it is frustrating.

Mr. SAMUELS. If I can say one other thing, sir. I can tell you that within the Bureau of Prisons, all inmates are expected to work unless there is a medical or psychological reason for them not being able. We also know that through research that work programs are also beneficial for recidivism reduction.

So when you look at different things, and that is why I stated earlier for the various programs, the numbers are going to vary, but we do require all inmates incarcerated in the Bureau of Prisons to work.

UNDOCUMENTED IMMIGRANTS

Mr. BONNER. So let's go back to illegal aliens. Is that in your view an issue with regard to overcrowding, that percentage? If it has been 26 percent for the last several decades, so it may not be higher than what it was, but is that an issue in terms of overcrowding and is there anything not that you can do, but is there anything that we could do in changing the laws that would deal with that as an issue?

And also do you know what the major sentencing connection is with the illegal aliens that are in our prisons? Was it drug trafficking or was it armed robbery or do you know what? Is there a particular sentence that the majority of the illegals who are non-U.S. citizens who are in the prisons came to prison for?

Mr. SAMUELS. Congressman Bonner, we can provide that for the record separately. But I can tell you that for the majority of all inmates, 50 percent of the inmates sentenced are for drug offenses which I would be safe to say that the majority of the inmates fall within that category, they are going to fall in there due to the large numbers.

[The information follows:]

SENTENCES OF NON-CITIZEN INMATES

As of March 30, 2013, nearly all non-U.S. citizens in the BOP custody were convicted of Drugs or Immigration charges (Drugs 45%, Immigration 43%). The next largest groups are Weapons (3%); Fraud (3%); and Racketeering (2%). Together these offenses make up 96% of the total. Please note that inmates could have been convicted of multiple offenses. The data above was based on the offense that had the longest sentence associated with it.

RELIGIOUS BOOKS IN PRISON

Mr. BONNER. Let me ask one final question and I appreciate the chairman's indulgence. This has nothing to do with you. It is a state prison in a state not in Alabama.

But I had a recent experience where I sent a young man who is incarcerated a couple motivational books to try to help encourage him. It was a vehicular homicide and he will be out of prison. Young man. He was 17 years old when the accident occurred and he will be out of prison before he turns 25.

The prison in that state refused to accept the books from a United States Congressman. I know we have a low approval rating, but I found it interesting that they could not somehow scan the books to make sure I did not put a knife in there or cocaine or anything else.

But what is the federal prison policy on a Bible, the Koran, or some other, or motivational, inspirational books, story about Jackie Robinson, something that might come from a non-family member? Are those allowed in federal prisons?

Mr. SAMUELS. Yes, sir. And our stance regarding any type of material literature that is submitted to be introduced into the prison population, we want to make sure that there is nothing in the material that incites violence——

Mr. BONNER. Sure.

Mr. SAMUELS [continuing]. And/or to be disruptive or any type of escape commentary that an inmate could use that to jeopardize the safety and security of our institution.

Mr. BONNER. Thank you, Mr. Chairman.

Mr. WOLF. Thank you.

FAITH BASED AND JOB PROGRAMS

Before I go to Mr. Schiff, there are answers and it really is not that complicated. I have learned a lot from Chuck Colson. One is faith. If you mention the faith community, these guys panic. They run. They are afraid. If somebody says the word Jesus, they are frightened.

I have been with Chuck Colson where he has been with prisoners who are hardened prisoners who have turned their life around. You all in prisons talk about faith-based community. You guys have washed out on that. You failed.

Secondly is work. I was in a program. We used to go down to Lorton. Charlie Hadaway, remember Charlie Hadaway? Man to man, we would go down there. It is work. It is dignity.

So what people say is, and the work that they are talking about, they are working in the laundry. They are not making things. So we wanted to bring only products that are made in China or outside of America, to make them.

We at one time had a television manufacturer who was going to go down to Lorton. They all opposed it because they thought they would be taking jobs away from someone. So these repatriation only are jobs that are no longer in the United States.

There is a baseball cap manufacturer in Alabama and in, I think, Buffalo. If they were to come in here and have—every baseball cap in the world could be made in the federal prison.

And you pay them not 30 cents an hour. You pay them a good wage. With that money, they take one-third they keep so they can go into the canteen and they can buy things like a real person.

Secondly, the other third of the money, you send it to their families. You just give it to their kids so they have something at Christmastime. They have some money to send back, not a lot, but it is something because they feel then they are taking care of the family.

Thirdly, you put into restitution. You have a restitution fund. Maybe it does not go to the very person that you committed the crime against, but it goes into a restitution fund so that when there is a person who has been harmed because of that, they get some help.

They have not moved on it at all. Chuck Colson could have solved their problem. Chuck called me a couple times. Chuck on Easter Sunday was going to go into a prison, I think in Alabama, and the Bureau of Prisons was not going to let him go into that prison in Alabama. Chuck Colson, because he served in a prison, he was in a prison, every Easter Sunday. He would go into a prison many other times, too. And they would not even let Colson in. Chuck had to call my office. So we called you guys to let Chuck Colson in.

So faith, they are afraid of faith. You talk about faith, mention the word Jesus, says you come to, you know, love the Lord, you want to follow the Ten Commandments, you want to love your neighbor like yourself, it frightens them. Their faith-based whole operation has not been a success. You fought it tooth and nail every time.

And jobs. Everyone, work is dignity. It is important. You put a man in prison for 15 years. I do not care who he is or who she is and if they cannot work, and that way, they can—I know a young fellow who is in your prisons. You let him out in Anacostia at night with a couple bucks in his pocket.

So you could solve the problem. And in fairness to them, they are afraid because they are afraid they are going to be sued by the ACLU or something like that. We are warehousing people and it is biblical too. In Matthew 25, Jesus talks about when I was in prison.

I saw Cardinal Dolan's comments the other day. Did you see his comments the other day in the *New York Times*?

Mr. SAMUELS. No, sir.

Mr. WOLF. He went into the prisons. So he said he wanted to do what Jesus told him in Matthew 25. It is a powerful statement. You could solve this problem. If you had an Administration that said we are going to really deal with this thing, we are going to have a faith-based operation, we are going to give work. Let me pay tribute to Mr. Mollohan. Mr. Mollohan had the best set of hearings on this issue that I have ever, ever seen. I think he had two weeks of hearings.

And then you do drug rehabilitation. I walked through some of these people. They cannot get into drug programs. So if you get a drug program, work, and the faith-based community, and then you could shorten some of these sentences.

You know, I think had Chuck Colson been the Bureau of Prison director for five years, you would have seen this thing dramatically. But because they won't go there, you cannot solve the problem.

You can respond and then Mr. Schiff.

Mr. SAMUELS. Mr. Chairman, if I may, I have a very active relationship with Carmen Hood who is the president of Prison Fellowship as well as Samuel Dye, the vice president. I have met with them on several occasions and actually invited them to the Bureau of Prisons to meet with myself and staff.

I believe we have a very, very good working relationship with them. And everything that you have mentioned in regards to faith-based initiatives, individuals working to improve their lives and work being something that is a good thing, I embrace and I support. We will continue to work with these individuals to expand.

And if there are individuals as you have described who are having concerns with partnering with us and working with the wardens at the local level, I would have a concern and I would do everything that I can to ensure that we are working with these partners. This is an issue for the Bureau of Prisons. I come before you and I tell you that we have limited resources and we depend greatly on volunteers to help us with the many initiatives that we have, that we would not want to turn individuals away.

Mr. WOLF. Well, I believe you when you say that. Why don't you call Pat Nolan or one of them and say, now, what prison was it that Chuck Colson could not get in on Easter, Easter Sunday. It was just like three years ago.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

And I want to echo some of the comments that my colleague, Mr. Bonner, said and the chairman's comments are a natural jumping out point for me as well.

There really is strong history and bipartisan commitment to trying to deal with the prison overcrowding problem and just staggering incarceration rates in the country, the degree to which we use our prisons to house people with mental illness or house people with substance abuse problems. And we are all looking for answers here.

And I join my chair and ranking member and great prior chairs and ranking members like Alan Mollohan in expressing very much the same interest and commitment.

DRUG TREATMENT PROGRAMS

And apropos of the chairman's comments on the drug issue, I wanted to talk with you a little bit about substance abuse treatment within BOP.

The residential drug abuse program, RDAP, has proved effective in not only reducing drug use and relapse among offenders, recent studies show that inmates who participate are 16 percent less likely to recidivate and 18 percent for women.

When an inmate reenters society after serving their time, if they reenter with an untreated substance abuse problem, we should be surprised when they do not recidivate.

I see that your budget asks for $15 million to expand RDAP and I am glad you are prioritizing the program, but I still have concerns and want more detail about whether we are reaching all the inmates who would benefit.

Your submission says that the goal is to make RDAP available to all eligible inmates, but part of the problem may be how we define eligible.

How far short of the goal of enrolling every inmate who wants to participate in RDAP are we at the moment? Are there eligibility conditions that make RDAP unavailable to inmates who would benefit because they are deemed too close to the point of release or for some other reason? Are there barriers to participation in RDAP that you know of such as language requirements or arbitrary sentence length requirements? And will the funding requested by BOP in the budget be sufficient to cover all those who would benefit?

Mr. SAMUELS. Thank you.

Congressman Schiff, the fiscal year 2014 budget, as you mentioned, includes $15 million, as well as 120 positions to expand the drug treatment program.

This RDAP expansion would allow BOP to reach the goal of providing 12 months' sentence credits to all eligible inmates. Right now, the average for sentence reduction is 9.4 months.

In fiscal year 2012, 6,620 inmates completed the program, and of these, 4,776 inmates were eligible and did receive sentence credits toward early release.

By the end of fiscal year 2014, the BOP will have 81 RDAP programs. RDAPs are designed as nine-month programs; however, sometimes we do have inmates who do not progress through the program within that time frame and they need a little bit more time, so adjustments are made for them to complete treatment.

Mr. SCHIFF. Well, I am not sure that those statistics are all that meaningful to me in terms of whether there are enough inmates that can get the twelve-month sentence credit or the nine-month sentence credit. I am less interested in how much sentence credit they get than whether every inmate who wants drug treatment has access to it. I mean, that is really the question that I have.

And can you tell us at this point, does every inmate who requests drug treatment get drug treatment?

Mr. SAMUELS. Right now we have a waiting list. This is one of the reasons why we are requesting to expand the program to ensure that every inmate who requests would not only be able to participate, but also receive the maximum number of reduced sentence

credits off their sentence, which would also help us with our crowding.

Mr. SCHIFF. Well, you know, again, let's just stay focused, not on the sentence credits because that may involve other things, but would the budget request that you made put you in a position to meet every request that you get by an inmate for drug treatment, or even with this budget request, are you going to be telling inmates, sorry, you have to stay on the wait list or sorry, you are too close to leaving custody or sorry your sentence isn't long enough. Will this budget request make treatment available on demand for all inmates?

Mr. SAMUELS. Yes, sir.

If we are funded, based on their requests, we would be able to accommodate all the needs of the eligible inmates who requests treatment.

Mr. SCHIFF. So, for——

Mr. WOLF. Would the gentleman yield, though?

Mr. SCHIFF. Yes.

Mr. WOLF. I think you ought to ask the question: Is that really accurate because that money is based on major reforms that will never pass the Judiciary Committee or maybe Mr. Goodlatte will, but I mean they haven't really worked. So, it is like saying that we are going to save money by doing this, which is never going to happen because they haven't really—and so if that never happens, there won't be the money.

So, the real answer is, unless all that passes, there will not be the money, and the chances of it passing, particularly now, is not very high, particularly if you don't come up here and work for it and go see the members and talk to members.

So, I think—why don't you explain how that would be, because if you are going to save it from here, but you are not really working for it to pass, then if that doesn't pass, you don't get the money.

So, I yield back to the gentleman.

Mr. SCHIFF. And I would be very interested—I am not sure that I follow, so, please, if you would explain?

Mr. SAMUELS. Yes.

Currently, all inmates who are eligible are participating in the program and we are able to deal with the waiting list. The concern we have is that the inmates who are participating, they are only averaging about nine months time off of their sentence.

If we are given the authority to expand, through the budget request, it will allow for all inmates who are participating to receive the maximum amount of time off.

Mr. SCHIFF. What legislative change, though, is the chairman referring to, because you seem to be saying to me as long as we get the money, we won't have to turn down a single inmate who wants drug treatment.

But what I think the chairman is saying is—and I don't know whether this is because there is a cap on the number of inmates who can get sentence reductions or the amount of sentence reduction—but what is the statutory bar, if there is one, because I don't want to see a situation where we give you the money that you ask for and if you come back in next year and we ask you, is there any wait list for drug treatment and you say, yes, there is, and I said,

but we gave you the money you asked for, you said you would eliminate the wait list, what happened?

Mr. SAMUELS. And the——

Mr. FATTAH. If the gentleman will yield.

They have built into their proposals, you can see it in this sentence right here, savings from reforms that are not yet the law of the land.

Mr. SCHIFF. So, you are counting on more than what we are proposing here—more than what you are asking for the RDAP program, you are counting on savings that will be added to the pot for RDAP that are very much in question, is that what I understand?

Mr. SAMUELS. Yes, sir.

That would be the legislative proposal for the $41 million in savings with the good conduct time release by providing an additional seven days.

Mr. SCHIFF. Well, let me ask the question another way then. What kind of a budget would you need for RDAP in order to ensure that every inmate who requests treatment can get treatment? How much do you need for RDAP to do that?

Mr. SAMUELS. I mean, currently, we would need the additional $15 million—if we received an additional 15 million dollars with our operating costs for RDAP, we would be able to meet the needs of every inmate to ensure that they receive the maximum——

Mr. SCHIFF. But is that also counting on $40 million in savings from something else, so, do you really need an addition of 58 million?

Mr. SAMUELS. Yes.

Mr. SCHIFF. Mr. Fattah, I will yield if you had a——

Mr. FATTAH. Why doesn't the gentleman yield for a second while you process that.

And before you finish the day or, you know, at some point, we want to get some more information about the—there was a major *New York Times* story about some of the challenges with the halfway house program and the process there.

Mr. SCHIFF. Oh, I am sorry, I thought this was an RDAP——

Mr. FATTAH. No, no, no.

I am just using—I am letting you——

Mr. SCHIFF. No, I have another question.

Mr. FATTAH. Oh, you go ahead.

Mr. SCHIFF. I thought you were going to——

Mr. FATTAH. I thought you wanted a minute to ponder.

Mr. SCHIFF. No, I thought you were going to help shed light that I am missing here.

Mr. FATTAH. I have no more light to shed.

Mr. SCHIFF. Well, I would like to follow up with you and find out how much you basically need overall for the program, maybe that is the simplest way to ask it; not in terms of an increase, but what is the dollar number you need allocated RDAP so that you could come in next year and say that we have not turned anyone away or put anyone on a wait list.

SOLITARY CONFINEMENT

Let me just turn to one other quick issue before I yield back the mic, and that is the issue of solitary confinement. I certainly fully

support and respect the need to protect staff and I am aware of the fatality, a tragic fatality in February. I am also troubled, though, by the frequent use of solitary confinement in our justice system, both within BOP and at the state level.

In addition, I know this is outside of your jurisdiction, but I am also concerned about the use of solitary in ICE facilities where undocumented immigrants are often being held on civil, rather than, criminal charges. I know you have testified twice before Senator Durbin's committee on the use of solitary, but I want to add my voice, as well, by saying that some of the reports that I read are deeply disturbing.

It can also be very counterproductive. Walter Dickey, the former Secretary of Corrections for the state of Wisconsin, said recently that he really believed when he got close to the situation in the supermax in Wisconsin and one of the things that he was seeing was mentally ill people who didn't come in mentally ill.

That is horrifying enough on it own, but when you realize that most of these prisoners are going to be released back into society at some point, if we have damaged them irreparably, through long-term solitary confinement, that's a danger to all of us.

So, if you could share your thoughts on BOP's current use of solitary confinement, what review you are putting in place or audit that is being undertaken to analyze how those decisions are made and whether BOP takes into account an inmate's mental health condition prior to deciding on solitary confinement.

Mr. SAMUELS. Yes, in regard to restrictive housing within the Bureau, I can tell you since the hearing that the Bureau of Prisons has done a lot of things internally looking at our practices. We are only utilizing restrictive housing for the purposes of safety and security, first and foremost, to prevent injury or harm to staff, inmates and the general public. For purposes where we utilize restrictive housing for administrative reasons, there are many instances where that would be appropriate. Our belief is that it should be temporary; this should not be something long-term.

All of the individuals who are placed in restrictive housing are reviewed by our mental health staff and these assessments are done routinely. I also welcome, based on the concerns that were raised during the hearing, having an independent component come in to do an assessment of the Bureau of Prisons and we are in a process of making that happen.

The National Institute of Corrections put out a solicitation to have someone come in, through an award, to actually look at the practices within the Bureau of Prisons and I am looking forward for that process to start. Any recommendations that are made will be looked at very, very closely to ensure that the necessary reform is made within the Bureau of Prisons.

My colleagues in corrections all share this belief. I believe that this is something that is not only for the Bureau of Prisons, but nationally throughout the country. Many are looking forward to this process taking place and the Bureau of Prisons is looking forward to sharing the information with our partners in corrections.

Mr. SCHIFF. And when do you anticipate that independent review will be concluded?

Mr. SAMUELS. We anticipate the independent review to be concluded in a year. The award to begin this process was recently presented and we now just have to have some meetings internally with the NIC staff facilitating that.

NIC is independent from me because of the position I hold as director. Although NIC falls under the Bureau of Prisons, I am removed from those discussions and NIC is handling that. We anticipate that everything will start very, very soon.

Mr. SCHIFF. Please keep us apprised.

Thank you, Mr. Chairman.

Mr. WOLF. Dr. Harris?

Mr. HARRIS. Thank you very much.

And I want to thank you, you know, for the difficult job that the Bureau does, and I, since seeing your resume, you started out as a correction officer, and I will tell you that has got to be one of the toughest jobs in the country, and anybody who doesn't believe it, just watch a couple episodes of Lockup and you will understand what that world is like.

THOMSON PRISON

First, I just want to get it out of the way. I do want to share, you know, the Chairman's disappointment over the Thomson prison. It thumbed the nose of the executive branch at the legislative branch and it is just not the right thing to do. I mean, that is not the way this country was established, not the way our government was and it is just the wrong thing to do and I will leave it at that.

OFFICER WILLIAMS MURDER

With regards to Officer Williams and that tragic incident in February, I take it that the person responsible is known, I mean, they know who is responsible. Is the death penalty going to be sought for that, for the murderer?

Mr. SAMUELS. Congressman Harris, due to the fact that this is currently under investigation and there are other facts surrounding this incident, I cannot comment on that.

Mr. HARRIS. The officer was stabbed to death by an inmate. I take it that inmate—and you say the inmate is known—so, what I am going to ask is the Administration going to pursue?

I take it that, unlike in Maryland where the death penalty is no longer going to be enforced, including—and in my opinion that is a mistake without an exception for correctional officers, because I have to tell you that, to me, that is the first exception that should be made, is a correctional officer killed in a prison—is the Administration going to pursue the death penalty in this case?

I mean, do you have any idea? I mean, is that—do you think that it ought to be pursued if this is?

Mr. SAMUELS. Congressman, I will state for the record, I believe that the individual or individuals involved in this horrific incident should be held accountable to the fullest extent of the law.

Mr. HARRIS. Okay. And the fullest extent of the law, it is my understanding, under federal law, is still the death penalty for someone taking the life of a correctional officer; is that right?

Mr. SAMUELS. Yes.

Mr. HARRIS. Okay. Thank you.

I just want to make sure of that, because, again, you know, we are charged with—and you are—with taking care of the correctional officers in this country and I truly believe they need to be protected. And I just believe—and believe me, I don't believe in the death penalty in all circumstances, but this one circumstance where we would be doing an injustice to our correctional officers if we didn't pursue the fullest extent of the law.

DRUG REHABILITATION

Let me just follow-up and I will end on this, is something that has been brought up time and time again, which is the drug issue and drug rehabilitation. Because I strongly feel that drug rehabilitation should be available to every prisoner, for whom it is an issue.

What percent of the prisoners—I know you said about half are on drug charges—but what percent do you estimate have a problem with substance abuse that would need treatment?

Mr. SAMUELS. One moment.

Mr. HARRIS. And I might ask, just as a physician asking the question, how do you determine that? How do you determine when a prisoner needs or is someone who should have a drug rehabilitation?

Mr. SAMUELS. Our statistics show that 40 percent of incoming offenders have a drug abuse disorder.

Mr. HARRIS. And how do you diagnose that when you say a drug—drug use disorder?

Mr. SAMUELS. Our psychology services staff.

Mr. HARRIS. Okay. Okay.

Do you do—again, out of pure curiosity—I mean, on some inmates, do you do a drug screening?

Mr. SAMUELS. Yes, sir.

Mr. HARRIS. Okay.

Mr. SAMUELS. And it is important to note, too, that 92 percent of those eligible for treatment do volunteer.

Mr. HARRIS. Good. I am glad to hear that. But I am going to follow-up on something that the chairman talked about, which is faith-based treatment. I looked at the literature.

Again, when I sat in the State Senate in Maryland, I looked at the literature, and as one of the few physicians in the legislature—interested in curing people—not in political correctness, just curing people. And I thought that the evidence was pretty good that a faith-based program had a lower recidivism rate.

I don't know if you agree. I looked at it and I thought that it was pretty clear.

First of all, is a faith-based program available to any inmate who would like to have a faith-based program of drug rehabilitation?

Mr. SAMUELS. Yes, Congressman, and for the record, I am very supportive of faith-based programs.

Mr. HARRIS. So, they have access to that, and the next question is going to be, when you look at recidivism rates of those who have gone through the federal prison program and participated in a faith-based program versus not, is there any data? I mean, do you all collect data on recidivism and look and see what works and what doesn't in a federal program?

Mr. SAMUELS. Yes, sir.

We are still in the process of collecting data for the individuals who participate in the Life Connections Program, as well as the Threshold Program we have in the Bureau.

Mr. HARRIS. What percent of those—of those—of the program slots would you categorize as faith-based, roughly, the percent at the federal prisons?

Mr. SAMUELS. You said program slots?

Mr. HARRIS. The program slots for drug treatment. So, when someone goes for drug treatment and you say, yes, you have faith-based available, what percent—roughly, what percent of these prisoners are being treated in a faith-based program?

Mr. SAMUELS. We have 81 Threshold Programs in 81 institutions throughout the Bureau out of 119, and that program allows for inmates to request participation. Our Life Connections Program, which is a residential faith-based program, we only have five institutions in the Bureau currently operating that program.

Mr. HARRIS. All right.

On that note, thank you very much, and, again, I would urge that this isn't—again, this is no time for political correctness. We want to do what is right and we want to do what works and what will turn these—the folks lives around. We know not every life is going to be turned around in a prison, but as you know, the gentleman from Alabama suggests that there are young lives that can be turned around and we would be doing a great disservice to them if we didn't turn those lives around.

And, again, I just want to close thanking you and the officers in your Bureau for doing a tough, tough job.

Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Harris. Mr. Fattah.

Mr. FATTAH. Just a couple quick questions.

INMATES PHONE CHARGES

One is, there has been a concern raised about phone charges—exploitive charges for use of phones by prisoners to, you know, when they get a chance to call home or do whatever. These contracts, have they been reviewed; do you have any concerns about it; and if there's a review in process, can you make sure that the committee—it is shared with the committee?

Mr. SAMUELS. Yes, sir.

Mr. FATTAH. Are you aware of this issue?

Mr. SAMUELS. Yes, sir.

I would respond by letting you know that we believe that it is very, very important for inmates to maintain family ties. I would not support anything that prohibits that from happening. Maintaining a relationship is very important when you look at individuals successfully being released and ultimately having——

Mr. FATTAH. But the charge has been made that some of the contracts for phone services in the prisons have extremely high charge rates when these calls are being made by inmates, the inmates are being taken advantage of. Can you look into that and provide the committee some information?

Mr. SAMUELS. Yes, sir.

[The information follows:]

HIGH CHARGES OF PHONE CALLS

The Bureau of Prisons supports the goal of inmates maintaining contact with their family and friends. As such, the BOP provides inmates with many means to facilitate these contacts via social visitation, telephone calls, written correspondence, and monitored electronic messaging.

The BOP's scope of service and operations for inmate telephone services is very different than that experienced by many state and local correctional systems. The BOP purchases, maintains, and manages all hardware (PBXs, routers, switches, etc.) and software to operate the inmate telephone system within the BOP. Additionally, the BOP leverages the GSA NETWORX contract by utilizing Sprint to provide telephone service for the Bureau at a much lower rate. GAO issued a report (GAO–11–893) in June 2011 that stated, "BOP's rates for inmate telephone calls typically are lower than selected state and military branch systems that also use telephone revenues to support inmate activities".

Mr. FATTAH. Secondly, on the security side, there has been some talk about eliminating the use of cell phones that they used in prisons by using blocking or jamming devices, which I think makes a lot of sense. Is that something that you are looking at?

Mr. SAMUELS. Yes, sir.

Mr. FATTAH. Okay. And could you also make sure that the committee is kept apprised on that?

And then finally, this good time issue is not really about prisons and good time. Good time is about safety of correction officials and safety of other inmates.

If prisoners have the ability to earn good time, they behave better, right?

Mr. SAMUELS. Yes.

Mr. FATTAH. And that is what that is all about, so we need to make sure that when we are looking at this that people understand that, to the degree that they are concerned about the safety of these officers and other inmates, that we need to create an environment where there is some carrot and stick that can be utilized in the prison environment which can be, you know, can help control the behavior of these inmates.

HALFWAY HOUSES

And finally, I would like a report on—or the committee, if you would respond to the committee, on what this halfway house deal is and what these challenges are about finding appropriate vehicles for re-entry.

Thank you.

Mr. SAMUELS. Will do.

[The information follows:]

NEW YORK TIMES ARTICLE—BROOKLYN, NY HALFWAY HOUSE

The article primarily focused on the background of Jack Brown III, Director of the Brooklyn Halfway House, Community First Services. Additionally, claims were made by various other sources that adequate services were not being provided by the facility, and that state and federal authorities do not regulate them effectively.

The Bureau of Prisons (Bureau) has a comprehensive approach to contract oversight which is driven by federal laws and internal policies and practices. Significant staff resources are dedicated to contract facility oversight nationwide to include: the Administration Division which is responsible for contract administration; the Correctional Programs Division which is responsible for policy and program development; and field staff throughout the Bureau's six regions who provide daily oversight of the facilities through on-site and remote monitoring.

Each facility has a Statement of Work (SOW) that outlines the various requirements the contractor is required to meet to include: inmate programs, staffing levels

and qualifications, emergency procedures, safety regulations, administrative procedures, security and inmate accountability guidelines.

Monitoring a contractor's performance is viewed as a daily, continuous, on-going, routine process. Residential Reentry Management (RRM) staff provide daily oversight of each Residential Reentry Center (RRC) to include: reviewing inmate accountability and case management documentation; providing assistance regarding disciplinary matters; assessing home confinement status; reviewing placement referrals and failure recommendations; and numerous other activities that involve inmate reentry management.

Part of the Bureau's monitoring process is to evaluate and assess each RRC's programs and services, as well as to ensure appropriate inmate accountability and staff supervision. In addition to conducting unannounced visits, RRM staff conduct interim and full monitoring at RRCs to monitor contract compliance. RRM staff conduct four formal reviews a year at the Brooklyn RRC, which include a comprehensive inspection of all aspects of contract requirements and operations. This is followed by interim monitoring that focuses on ongoing issues and previous deficiencies or any other areas of concern. RRM staff also provide both formal and informal training for contract staff as needed.

If any allegations of staff or inmate misconduct or inappropriate program activities are received, and/or if it is determined that the contractor is not in compliance with the SOW, appropriate contract action is taken. The Bureau takes misconduct allegations very seriously. The Bureau reports and conducts investigations into these allegations. If misconduct allegations are validated, the Bureau takes appropriate actions which may include staff disciplinary action, counseling, notice of deficiency, notice of concern, deductions, or other appropriate contractual or administrative remedies.

Bureau staff, to include regional and central office RRM staff as well as the Residential Reentry Manager that oversees the Brooklyn facility, have visited the Brooklyn RRC. Staff observed procedures, programs, and facility documentation to ensure the contractor's contractual compliance. Areas requiring corrective action were documented with recommendations provided for corrective action as needed.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Fattah.

Just to go back to clarify the record, because I know everyone here would agree with Dr. Harris and Mr. Schiff and I know Mr. Fattah does on the drug treatment.

The budget indicates that you intend to seek new authorizing legislation for sentencing reforms that would allow inmates to earn more credit for good behavior and to reduce sentences with credits earned by participation in educational and vocational programs.

Providing it is enacted—will it not require them to enact it?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. And they will have to enact it by when? By when?

Mr. SAMUELS. We would hope very soon to maintain——

Mr. WOLF. I mean, realistically, what do you think the chances of that are? Between zero and 100, what do you think?

Mr. SAMUELS. I would be positive and hope that it can happen.

Mr. WOLF. But that is not the way this place works, though. I mean, you've got to be up here and mobilized.

So, I mean, unless you work for this—unless the Attorney General works for this—unless the White House works for this, it is not going to happen.

And so you are predicating this on—this is the third year in a row that this savings has been assumed, the third year. This is like a budget gimmick. They just plug it in. The third year, and yet it has never materialized. Given past experiences with such a legislative proposal, the question is what is your assessment that it will become law and you're hoping it does.

What would be the budget impact on operations if these savings do not materialize?

Mr. SAMUELS. If we don't achieve the savings, it will continue to be very, very difficult for us with limited resources.

Mr. WOLF. Well, I just think the record shows—I would like you to give us a report on how often you are up to see the Senate Judiciary Committee and the House Judiciary Committee, and if you would keep both Mr. Fattah and myself informed of how many visits you make to members of the House and Senate Judiciary Committee, and what the chances are, then maybe Mr. Fattah—if we really saw that you are really working it, we would—I think I would do a letter and I think that Mr. Fattah would do a letter for it, too.

Mr. FATTAH. A full report.

Mr. WOLF. But we just don't want to be joining in a—you know, Dietrich Bonhoeffer talked about "cheap grace," you know, cheap grace, to say that I am going to put it in my budget and we are going to take this money from my budget. We know, it has already happened that we are going to do this.

So, we would like to see a report of how hard you all are working to get this done, and if you get to a certain point—if you convince Mr. Fattah—I will sign the letter.

Mr. SAMUELS. Thank you, sir.

Mr. WOLF. One question was how many people who would like to be in a drug treatment program are not in it?

Was that 92 percent—so 8 percent, is that—how many want to be in, but are not in?

Mr. SAMUELS. Yes, 92 percent of those eligible for treatment volunteer.

Mr. WOLF. Okay. So, how many people are in the Bureau of Prisons today who want to be in a drug treatment program but cannot be in because of revenue or costs or whatever?

Mr. SAMUELS. We provide everyone an opportunity. If they——

Mr. WOLF. So, everyone that wants to be in can be in?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. But it has to be purely voluntary, is that because you feel if it is not voluntary, it is not going to work?

Mr. SAMUELS. As I mentioned earlier we can't force participation.

Mr. WOLF. Why can't you? They are in prison, though, aren't they? We can make them work and we can make them, I mean, there a lot of things——

Mr. SAMUELS. We strongly encourage, Mr. Chairman, any individuals to participate because we do believe it is something very important.

Mr. WOLF. But why can't you, because I have talked to people that tell me like the first or second time they are in something they fight it, and then by the third day, they are glad they are in it. Why can't you mandate it? Is that an ACLU thing or is that an internal policy?

Mr. SAMUELS. It is mainly the behavior of the individual. We will always continue to try and convince them. We never give up.

Because they are in our care, I do believe we have an obligation and a duty to ensure that we are doing everything possible, but ultimately, the individual has to be willing to participate in the program. We do know that if individuals are placed in the program, for example, the residential drug abuse program, and if they are

not willing participants, they can taint the environment for those other individuals who want to participate.

WORK PROGRAMS

Mr. WOLF. Sure. How about for work? Can you make people work?

Mr. SAMUELS. We can encourage the individuals to work and we can take——

Mr. WOLF. But they are in prison, though.

Now, I mean, when I was in the military, I was not encouraged to do certain things, I was told to do things. And if I didn't do things——

Mr. SAMUELS. We can take disciplinary actions against inmates who refuse work.

Mr. WOLF. So, if you—prisoner X you must do this, you must work; you can't do that?

Mr. SAMUELS. Yes, sir.

We can give them an order to work and if they refuse, we can take disciplinary action——

Mr. WOLF. Okay.

Mr. SAMUELS [continuing]. For individuals who refuse.

Mr. WOLF. I would imagine that most of them are very excited to be working.

How much do you pay a person working—in the prison industries, how much are they paid?

If you were to be fortunate enough to get the contract for every national park in the country and—where are the Bureau of Prisons hats made?

Mr. SAMUELS. The Bureau of Prisons hats are being made in Jesup.

Mr. WOLF. Where?

Mr. SAMUELS. Jesup, Georgia.

Mr. WOLF. So, you make your own hats?

Mr. SAMUELS. Yes, sir.

After the hearing we had last year——

Mr. WOLF. Because before you were not, so you are now making your hats?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. Are you making your hats for every Bureau of Prisons person who wears a hat—made in the Bureau of Prisons?

Mr. SAMUELS. If they require a hat for foul weather gear, we can make the hat.

Mr. WOLF. What about baseball caps—baseball caps?

Mr. SAMUELS. Yes, we are making baseball caps.

Mr. WOLF. Who else are you making caps for?

Mr. SAMUELS. Well, we are in the process of——

Mr. WOLF. What about the FBI and DEA and ATF and Marshal Service?

Mr. SAMUELS. We are working towards that goal to expand it with the other components.

Mr. WOLF. Now, did you ever meet with the Park Service? Every hat in the Park Service, now, is made in China.

Mr. SAMUELS. The staff in Federal Prison Industries are actively pursuing every avenue to introduce this ball cap that we are actu-

ally proud of which we can now manufacture, utilizing inmate labor.

Mr. WOLF. And have you contacted the one or two companies left in America that are making caps?

Mr. SAMUELS. Yes.

Mr. WOLF. And are you going to do a cooperative arrangement with them?

Mr. SAMUELS. We are making every effort to do that, sir.

Mr. WOLF. Could you keep us informed on that?

Mr. SAMUELS. Yes.

PRISON RAPE

Mr. WOLF. Prison rape, the Attorney General signed the final Prison Rape Elimination Act Rule in May of 2012 which explicitly encompasses federal prison and detentions.

How do these rules affect the Bureau of Prisons and its facilities, and how many rapes are reported, say, per year before the passage of this—before the implementation of the regulation?

Mr. SAMUELS. The information I have with reported rapes that have gone through the due process, as far as reviewing all the material for 2011, it was approximately 70.

Mr. WOLF. Seventy?

Mr. SAMUELS. Yes.

Mr. WOLF. And you would believe that it is much higher, but they just don't report that.

Mr. SAMUELS. That is possible.

Mr. WOLF. So, at least 70 in the federal prison system.

And now that the regulations are put in effect since you are living under that now, have you seen any change?

Mr. SAMUELS. We haven't seen any significant change in regards to reporting. However, what we have done since—as you have indicated, August 20, 2012, we issued our program statements that cover sexual abuse and behavior prevention and intervention program within the Bureau, as well as our administrative remedy program, and all of those policies have been updated and issued.

We have provided training at every level within the Bureau. I had a national wardens conference meeting. I had discussion with all the wardens on our responsibilities and duties to prevent any type of sexual assault or harassment within the inmate population and we are doing everything that we can to prepare for the national audit that is scheduled to occur in August.

Mr. WOLF. Do you find that they agree with this, that they are happy that, that they are enthused that they are going to really work on this?

Mr. SAMUELS. I would report that our staff realized that with the PREA standards, many of the procedures that have been identified and recommended are procedures that we have done for many, many years.

Mr. WOLF. How are you finding the states? How are the states doing? They must tell you now. How are they embracing the standards?

Mr. SAMUELS. It varies. The States are obviously looking at the requirements and the resources that it would take to facilitate many of the requirements within the PREA standards and most of

them are working towards the goal of ensuring that they can live up to the standards. The Bureau of Prisons, will be the first to actually go through the audit that is scheduled for later this year.

Many are very, very interested in how we are seeing things, how we are preparing and the impact that it will have on the Bureau of Prisons in regards to corrections throughout the United States.

GANGS

Mr. WOLF. On gangs, how active are gangs in the federal prisons? What's the scale, the seriousness, of the gang activity?

Mr. SAMUELS. Mr. Chairman, we do continue to have a gang problem within the federal system. Right now, we have 19,848 inmates who are affiliated with 96 gangs, groups, or criminal organizations within the Bureau. And of that number, approximately 1,100 plus inmates are affiliated with our five disruptive groups.

Mr. WOLF. What are they?

Mr. SAMUELS. The five disruptive groups are prison gangs that have a history of disrupting operations and security in either state or federal systems. We track these groups to ensure that we are sharing information with our law enforcement partners.

The groups identified within this category are the Texas Syndicate, the Mexikanemi, Mexican Mafia, Aryan Brotherhood, and Black Guerilla Family.

Mr. WOLF. And are they nationwide or are they local?

Mr. SAMUELS. These groups operate nationally.

Mr. WOLF. Nationally. And one thousand are in those?

Mr. SAMUELS. Yes, sir.

Mr. WOLF. Do you have any particular anti-gang programs?

Mr. SAMUELS. Yes, we do.

Mr. WOLF. And have they been successful?

Mr. SAMUELS. It has proven to be successful. However, with our system being very, very large, if an individual elects that they want out of a gang, with having 19,000 gang affiliates, we have to be very, very careful that we provide safe housing for the individual while they serve their time.

Mr. WOLF. Do they join the gangs because they want to be in the gangs or they join the gangs to protect themselves?

Mr. SAMUELS. Many individuals come in and are already in the gang and there are individuals who will sometimes join a gang seeking which protection. One of the initiatives that we have which has been on-going within the Bureau is that we want to do everything we can to ensure that inmates do not have to seek protection from other inmates because it is our responsibility to ensure that the inmates can serve their time in an environment that is conducive to their well-being and safety.

MEDICAL SERVICES CONTRACTS

Mr. WOLF. Okay. I have a number of others and we are going to try to wrap up pretty fast. But physician vacancies, your request assumes a $50 million savings from renegotiating contracts for medical services at nominal levels but with the Medicare reimbursement rate. Honestly, and you are under oath, what are the chances of that happening?

Mr. SAMUELS. It would be very difficult. I can tell you that the BOP has between 70 and 80 comprehensive medical contracts across the country, and many of these contracts are in rural areas that tend to be single source and are, therefore, more expensive.

We intend to reach the offset by renegotiating the more expensive contracts at lower rates.

Mr. WOLF. So, this is another $50 million that we are not really—kind of like Monopoly money or something and——

Mr. SAMUELS. We are going to do everything that we can to——

Mr. WOLF. I don't doubt it, but I just—that is another big, big hole in the budget.

FEDERAL PRISON INDUSTRIES

I am not going to go into the prison industries. Again, I just want to reiterate my utter disappointment in the Bureau on that issue.

How many people were in prison industries in the year 2000?

Mr. SAMUELS. In the year 2000, approximately 23,000.

Mr. WOLF. Twenty-three thousand. And how many were in, in 2006?

Mr. SAMUELS. I would have to provide that.

[The information follows:]

INMATES IN FEDERAL PRISON INDUSTRIES IN 2006

In FY 2006, 21,205 inmates worked in Federal Prison Industries.

Mr. WOLF. So, roughly——

Mr. SAMUELS. About the same.

Mr. WOLF. And how many were in there in 2012?

Mr. SAMUELS. Thirteen thousand.

Mr. WOLF. Thirteen thousand and at this moment, at this very, very moment, five of 12, how many are in the program?

Mr. SAMUELS. Thirteen thousand.

Mr. WOLF. So, there was no drop off from 12 to this year? Thirteen were in——

Mr. SAMUELS. Yes, we are employing approximately eight percent of the inmate population in FPI.

Mr. WOLF. So, we dropped 10,000 from—when did the big drop—what year did the big drop off occur?

Mr. SAMUELS. Within the last five years, so between 2007 and the present.

Mr. WOLF. So, you lost roughly 10,000 from 2007 until the present?

Mr. SAMUELS. Yes. We have lost, approximately, sir, $100 million in earnings during that time frame.

Mr. WOLF. So, the $100 million, we could have taken for both of these programs—if prison industries were working, you would have $100 million more that we wouldn't have to rely on changing laws that may never happen. So, at the very high, what is the most, when you were at 23,000, the Bureau of Prisons was bringing in for revenue for you all?

Mr. SAMUELS. Mr. Chairman, I would state that for Federal Prison Industries, their earnings and any profits are non-appropriated.

Mr. WOLF. None goes to you at all?

No, I know that, but what percent—the money that comes in, what percent goes to the prisoner, what percent goes to the operation of the prison?

Mr. SAMUELS. None goes towards the operation of the prison.

Mr. WOLF. So, that $100 million went directly to the prisoners?

Mr. SAMUELS. And to pay staff salaries.

Mr. WOLF. And to pay staff salaries, to those who were administering.

So, if you are working in the Bureau of Prisons and you are a guard in the prison industries or if you are a supervisor—not a prisoner, but you come in and supervise—your salary is paid for by the operation of the prison industries.

What is the high mark level of employees that you had, who were Bureau of Prisons employees, but have been paid for through the work program? How many would that be?

Mr. SAMUELS. We will provide you the number.

[The information follows:]

HIGH MARK FOR FPI STAFFING

In FY 2008, FPI employed 1,656 staff.

Mr. WOLF. So, has the loss not had any impact on the operation of the Bureau of Prisons? The only loss was with regard to the prisoners?

Mr. SAMUELS. We have a loss regarding keeping inmates busy, which is very, very crucial to the safety and security of an institution because the 10,000 inmates who are no longer working in the Federal Prison Industries, now we have to find other things for them to do. As we continue to have the increase in our population, it makes it more challenging when you are trying to utilize resources with a limited number of opportunities available.

Mr. WOLF. The last question, if you really got imaginative and creative and captured the baseball cap business with the Park Service and the Bureau of Land Management and Fish and Wildlife and the University of Alabama. Penn State, and everybody, you know, the NCAA embraced you guys and everybody else, including t-shirts and bringing back an industry, because that creates jobs in America, because the person who drops the fabric by may be a Teamster who is dropping that off or the person who's bringing the machinery by is some other union, how many people could you put to work?

Mr. SAMUELS. Based on our projections, we would be able to increase the number.

Mr. Chairman, we listened to you very intently and after the hearing last year, we established an internal working group to identify these types of opportunities and to do as much as we can possibly do in going after this market. The staff are very, very engaged in this process. They see the opportunities and they do believe that if we continue on the path that we are on that it will be productive.

Mr. WOLF. Well, I am going to ask the Attorney General tomorrow if he will make this a priority. I think the Attorney General and the White House should make it a priority.

How many baseball caps do you think you have in your house?

Mr. SAMUELS. For staff in uniform who would require, just——

Mr. WOLF. No, in your own house.

In my house—I have 16 grandkids, we have baseball caps all over the place.

Mr. SAMUELS. I have a bunch, sir.

Mr. WOLF. What do you think you have?

I have 25, probably. What do you have?

Mr. SAMUELS. Between 25 and probably 30.

Mr. WOLF. And either Honduras or China—so, imagine if every one of those caps, why don't you call the NCAA and ask them, because their contract is renegotiated. You can probably give a better price.

Mr. SAMUELS. We are in the process of trying to identify a vendor.

Mr. WOLF. Well, get the company in Alabama or in Buffalo, if that is where it was and go to the NCAA—and, you know, I would write—I think Mr. Fattah would join me—we would write the NCAA and the MLB and all of them to ask them when their contract ends with whomever they have it with, to use you.

And I think the Park Service would obligate it, and if the White House directed the Park Service, upon the end of that contract, they would use you. The opportunities are unlimited.

And lastly, it would give the dignity—and I don't believe that you ought to do this and pay the men 30 cents. I think you ought to pay them a decent salary—a little less than maybe what the company outside is, because that is what has driven this out of America—but a wage, a fair wage and then I would urge you to take it and divide it into the threes: one-third for the prisoner to have in however he wants to, one-third to go to the family, and one-third to go into a restitution—do you have a restitution fund in the Bureau of Prisons?

RESTITUTION FUND

Mr. SAMUELS. Yes, sir.

Mr. WOLF. And how much is in the restitution fund at this moment?

Mr. SAMUELS. The money that goes into the fund, we don't control it. It goes into the crime victims' fund.

Mr. WOLF. What do you think is in there, has come in from you guys?

Mr. SAMUELS. I can provide that to you.

[The information follows:]

RESTITUTION FUND

Inmates who work in the BOP contribute up to 50 percent of their earnings toward meeting their financial obligations, e.g. court ordered fines, child support, and/or restitution. Since 2006, inmate contributions have been as follows:

Inmates who work in Federal Prison Industries (FPI):

Fiscal Year	Restitution from FPI inmates
FY 2006	$2.6 million
FY 2007	$2.7 million
FY 2008	$2.7 million
FY 2009	$2.3 million
FY 2010	$1.8 million

Fiscal Year	Restitution from FPI inmates
FY 2011	$1.6 million
FY 2012	$1.2 million

Inmates who work in BOP Institutions (non-FPI Jobs):

Fiscal Year	Restitution from other inmates
FY 2006	$7.4 million
FY 2007	$7.3 million
FY 2008	$7.1 million
FY 2009	$6.9 million
FY 2010	$6.8 million
FY 2011	$6.9 million
FY 2012	$7.0 million

Mr. WOLF. Okay.
Mr. Fattah.
Mr. FATTAH. Thank you, I am good.
Mr. WOLF. Okay. Thank you very much for your testimony.
The hearing is adjourned.

QUESTIONS FOR THE RECORD—MR. WOLF

PRISON OVERCROWDING

Question. When prison overcrowding is described in terms of double- and triple-bunking, please explain that means, in comparison to an optimum configuration at different security levels.

Answer. The rated capacity is defined as the number of prisoners a given prison facility is built to house safely and securely, and the level at which an institution can make available the basic necessities, essential services (e.g. medical care), and programs (e.g. drug treatment, basic education, and vocational education, etc.). In determining the facility's rated capacity, the BOP also considers the American Correctional Association (ACA) occupancy and space requirements.

Crowding is the extent to which a facility's inmate population exceeds its rated capacity. The BOP's formula for calculating rated capacity has changed over time. Until 1991, the rated capacity of a facility was equivalent to the total number of cells, because rated capacity was based on one inmate being housed in each cell. As a result of the growth in the BOP's population during the 1980s, the BOP began to double-bunk (i.e., house two inmates in each cell) in many of its facilities, particularly at the lower security levels. In 1991, the BOP established a new rated capacity formula that allowed for stratified bunking across all security levels. The BOP's current rated capacity guidelines account for: minimum and low security institutions 100% double bunking; medium security institutions 50% double bunking and; high security institutions 25% double bunking.

In order to accommodate the growing inmate population, BOP is triple and double bunking in excess of the percentages allowed for the safe operation. Crowding of this magnitude affects inmates' daily living conditions, program participation, and meaningful work opportunities. At the end of FY 2012, 20,526 (94 percent) high security inmates were double bunked, and 17,049 (29 percent) of medium security inmates and 38,421 (85 percent) of low security inmates were triple bunked, or housed in a space not designed for inmate housing, such as television rooms, open bays, program space etc.

Question. The Bureau of Prisons has sustained a significant gap in the inmate-to-staff ratio, while your own Office of Research and Evaluation has confirmed that such high ratios lead to higher levels of serious inmate assaults. The BOP ratio was 3.57 in 1997 but has hovered between 4.8 and 4.95 since fiscal year 2005. In your FY14 request the additional 2,087 positions you request will essentially hold at this level. The comparable ratio at State prisons, I

understand, is about 3:1. Does BOP have a target ratio it is trying to achieve? What are the security implications of the current ratio?

Answer. This past February, the BOP suffered tragic losses with the murders of two of its staff. One of those losses occurred on February 25, 2013, when Officer Eric Williams, a Correctional Officer at the United States Penitentiary in Canaan, Pennsylvania, was stabbed to death by an inmate.

Officer Eric Williams was alone in a housing unit with 130 high security inmates the night he was killed. This is a typical pattern of our staffing in our facilities around the country. While BOP does not have a specific target, a lower staff-to-inmate ratio would lower the risk of repeating this tragedy in the BOP.

The current inmate to staff ratio negatively impacts the BOP's ability to effectively supervise prisoners and provide inmate programs. When an insufficient number of Correctional Officers are available to cover an institution's mission-critical custody posts on any given day, institution staff make up the difference by assigning non-custody officers (a practice termed "augmentation"), authorizing overtime, or, if no other alternative exists, leaving posts vacant. When the BOP institution managers use augmentation, the normal duties performed by the augmenting staff are curtailed or delayed, thereby interfering with the BOP's ability to provide inmate programs and operations.

Finally, a BOP study found that an increase in either prison crowding (the percent of inmates above rated capacity) or staff span of control (the number of inmates supervised per staff member) corresponds to an increase in serious assaults. The study concluded that an increase of one inmate in a federal prison's inmate to custody staff ratio corresponds with an increase in the prison's annual serious assault rate, of approximately 4.5 per 5,000 inmates, independent of all control variables.[1]

Question. Your budget performance measure for Institution Security and Administration is the rate of serious assaults per 5,000 inmates. Your budget justification reflects that you experienced 12 such assaults in FY12. What are current projections for FY13 and FY14? Are numbers rising as the inmate-to-staff ratio has grown? Are there factors other than overcrowding associated with assault rates, such as changes in makeup of the prisoner population?

Answer. The actual rate of serious assaults for FY 2012 was 12 per 5,000 inmates. The total number of serious inmate-on-inmate assaults in FY 2012 was 409. For FYs 2013 and 2014, the current projected rate is 13 serious assaults per 5,000 inmates. A BOP study found that a one percentage point

[1]Federal Bureau of Prisons. The Effects of Changing Crowding, and Staffing Levels in Federal Prisons on Inmate Violence Rates (October 2011).

increase in a Federal prison's crowding (inmate population as a percent of the prison's rated capacity) corresponds with an increase in the prison's annual serious assault rate of 4.09 assaults per 5,000 inmates. In addition, an increase of one inmate in a prison's inmate-to-custody staff ratio corresponds with an increase in the prison's annual serious assault rate of approximately 4.5 assaults per 5,000 inmates. The study makes clear that violence is directly correlated with institution crowding and inmate to staff ratios. However, the BOP has taken steps to hold down the rate of assaults using enhanced population management and inmate supervision strategies in such areas as classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and more controlled movement.[2]

NEW PRISON ACTIVATION

Question. Your budget calls for $141 million to complete activation for facilities in New Hampshire and Alabama, and begin activation in West Virginia, Mississippi, and Illinois. Your budget materials indicate the Federal Correctional Institutions in Berlin, New Hampshire and Aliceville, Alabama activations will be complete before the end of FY14. When will the remaining three sites will be fully operational?

Answer. The three remaining sites: Administrative USP Thomson, Illinois; FCI Hazelton, West Virginia; and USP Yazoo City, Mississippi are awaiting activation funding which is requested in the FY 2014 President's budget. Once the activation funding is received, the activation process will start. This is a multi-year process that includes many steps from selecting wardens and executive staff, to identifying and ordering equipment, meeting with the community, recruiting and training new staff, furnishing and equipping the new facilities, and eventually accepting inmates. If the activation is fully funded at the start of FY 2014, then the BOP will be on a path to have these facilities fully operational by the end of FY 2015.

Question. Based on your budget information, I understand the three new facilities will eventually add about 5,000 bed spaces to BOP resources. How much will these facilities reduce current overcrowding?

Answer. At the end of FY 2013, the system-wide crowding level in the BOP facilities is projected to be 38 percent. When the three new facilities are fully activated, it is projected to reduce system-wide crowding to 36 percent and correspondingly reduce crowding in high security facilities from 55 percent to 43 percent and in medium security facilities from 45 percent to 44 percent.

[2]Federal Bureau of Prisons. The Effects of Changing Crowding, and Staffing Levels in Federal Prisons on Inmate Violence Rates (October 2011).

Question. Does the Bureau have a long term plan to achieve more safe and sustainable facility capacity? What are those targets, in bed space terms? What level of funding would be needed to achieve them?

Answer. The Status of Construction exhibit lists current projects, both fully and partially funded (FY 2014 President's Budget, Federal Prison System, Buildings and Facilities, Exhibit N). New BOP facilities and funding for contract beds added from FY 2010 to FY 2014 total roughly 12,750 beds. In addition, the Department is exploring all options for mitigating population growth. The FY 2014 President's Budget includes proposals to increase sentence credits for good conduct and to expand residential drug treatment programs.

RESIDENTIAL DRUG ABUSE PROGRAM

Question. The Bureau of Prisons has encountered persistent and significant vacancies in the Psychology Services department. In FY12, this amounted to 21 percent—118 vacancies of 569 allocated psychology staff positions. How will the Bureau address these vacancies to ensure it has staff for the expanded RDAP?

Answer. The staffing level cited in your inquiry relates to Psychology Services positions, as opposed to Drug Treatment positions, which are funded separately. As of June 26, 2013, Psychology Services had a vacancy rate of 20% and Drug Treatment had a vacancy rate of 9%. Vacant positions in Drug Treatment are primarily linked to sequestration. The DOJ has authorized backfilling of a number of these vacant positions in the upcoming weeks.

We also anticipate improved staffing levels in Psychology Services, the component responsible for the provision of routine mental health care, specialized mental health, and sex offender treatment programs. At the requested funding level in FY 2014, the BOP will have the ability to recruit and retain qualified mental health professions. The BOP is a desirable career choice for many mental health professionals; recruitment challenges exist in only a very few of our most rural locations.

Question. Your budget projects that average early release credits will rise from 10 in FY13 to about 10.7 months in FY14. What cost avoidance, if any, will this provide through resulting early release of inmates who complete the RDAP program?

Answer. There will be some cost avoidance when average release time increases from 10.0 to 10.7 months. However, at this time, the BOP does not have a specific estimate of the resulting cost avoidance.

PRISON RAPE ELIMINATION ACT

Question. GAO reported that DOJ had performed a cost-benefit analysis for the rule, indicating that full compliance would translate into costs of about $55,000 per year for each prison over 15 years. How is this reflected in your request?

Answer. The President's FY 2014 budget request for the BOP does not include any new funding related to PREA. The majority of the PREA requirements, including the focus on training, detection, prevention, and response, reflect long standing BOP policies and practices in this area. Many of the PREA standards can be addressed using current BOP policies and procedures, and they are therefore funded within the requested level.

FACILITIES—MAINTENANCE AND REPAIRS

Question. The FY14 budget request excluding the Thomson initiative, funds just basic and emergency repairs. GAO recently reported a third of BOP's facilities are over fifty years old. What is the extent of the backlog in maintenance and repair? Could poor conditions cause BOP prisons to lose accreditation?

Answer. The BOP has a current backlog of Modernization and Repair (M&R) major projects totaling 135 projects at an approximate cost of $321.0 million. This estimate does not include minor projects, Long Range Master Plan improvements, or all major project needs. The BOP is committed to maintaining operations and preserving aging prison infrastructure as safely as possible and maintaining BOP institutions' accreditation with the American Corrections Association. The request is anticipated to cover the most critical repairs.

ALTERNATIVES TO TRADITIONAL INCARCERATION

Question. The budget proposal discusses alternatives to traditional incarceration, such as expanded home incarceration and monitoring programs. Which alternatives are you specifically proposing and how do they differ from existing options? Which inmates will be eligible?

Answer. The FY 2014 President's Budget continues to propose using Residential Reentry Centers (RRCs) and home confinement as alternatives to incarceration. These transition programs are not novel but are acceptable alternatives to incarceration for inmates who have demonstrated personal responsibility and positive programming while in custody. All inmates are eligible for pre-release RRC placement and are assessed on an individual basis.

RRCs are most effective, in terms of recidivism reduction, for higher-risk inmates, especially those who have demonstrated a willingness to participate in education, vocational training, and treatment programs while they are in BOP institutions. Consistent with research findings, BOP continues to move toward a risk-reduction model in RRC programming, which recognizes that lower-risk inmates may need few RRC services and may, therefore, receive relatively short RRC placements and instead transition more rapidly to home detention; some may be placed directly in home detention with no time in an RRC. In contrast, higher-risk inmates who have shown they are ready to address their crime-producing behaviors may be appropriate for longer RRC stays. The inmates are transferred from BOP institutions to RRCs near the end of their sentence for transitional programming. Life skills, gainful employment, reestablishment of family ties, and drug treatment are major aspects of transitional programs. Home detention is the last phase of incarceration for eligible offenders. Strict accountability procedures are required for inmates on home detention to continue the sanction of the sentence. As of June, 27, 2013, there were 9,480 inmates in RRCs and 3,058 inmates on home confinement.

Question. What outcomes do you anticipate through use of each specific alternative? Are there specific financial savings you envision?

Answer. The BOP uses RRCs to help inmates reintegrate into the community, as well as to reduce crowding in prisons. Research has demonstrated that inmates who transition into the community through an RRC are less likely to recidivate and more likely to achieve full time employment.[3] Because these alternatives are intended to reduce recidivism and thereby mitigate future population growth, specific financial savings are not incorporated as an outcome of the programs.

REENTRY AND RECIDIVISM REDUCTION: SECOND CHANCE ACT REQUIREMENTS

Question. Your budget request calls for $28 million in new funding to facilitate reentry and reduce recidivism. What are your plans for this funding? Could you describe how projected reductions in recidivism may result in cost savings for the federal prison system?

Answer. The President's Budget requests $28 million to support reentry programs in the BOP. This amount includes $6 million to expand RRCs; $5

[3]The Federal Bureau Of Prisons Inmate Release Preparation and Transitional Reentry Programs U.S. Department of Justice, Office of the Inspector General Audit Division, Audit Report 04-16, March 2004.

million to continue implementing the Inmate Skills Development Initiative; $7 million to expand education programs; and $10 million to expand psychology and drug treatment programs. The research has demonstrated that inmates who participate in vocational and occupational training are 33 percent less likely to recidivate. Inmates who participate in education programs are 16 percent less likely to recidivate and inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to relapse to drug use within 3 years after release.[4] As is the case with RRCs and home confinement, because these programs are intended to reduce recidivism and thereby mitigate future population growth, specific financial savings are not incorporated as an outcome of the programs.

Question. Part of the $28 million request includes $6 million for residential reentry centers. How many centers does the Bureau contract with at present, and how many more would this funding provide?

Answer. The BOP currently has 262 active residential reentry center contracts. The additional $6 million for FY 2014 could provide an additional 450 inmates with an approximate six month community placement. In areas where a shortage of community placement opportunities has been identified, the Bureau will pursue increased contract action to expand services.

CONTRACTED PRISONS

Question. Your budget includes $26 million for an additional 1,000 contract beds for low security male criminal aliens, 82 percent of whom are currently being "triple-bunked". Will this create an equivalent savings in bed space at existing BOP-operated facilities?

Answer. The request of $26 million is to accommodate future population growth. Without additional low security contract bed space, the majority of new low security inmates coming into the system will have to be diverted to low and medium security institutions, which are already severely overcrowded. The proposal is to contract out bed space for non-U.S. citizen inmates from the BOP operated facilities, thus making bed space for U.S citizen inmates in BOP's facilities.

Question. Would this proposal be carried out by using existing contract space, or by a new competition for bed space?

Answer. The proposal is for new competition of bed space.

[4]Saylor, W. and Gaes, G. (1997). Training Inmates through Industrial Work and Participation and Vocational and Apprenticeship Instruction, *Corrections Management Quarterly* 1(2), 22, 32-43.

Appendix I

U.S. Department of Justice Office of Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*

U.S. Department of Justice
Office of the Inspector General

A Review of the Operations of the Voting Section of the Civil Rights Division

Office of the Inspector General
Oversight and Review Division
March 2013

Table of Contents

CHAPTER ONE
INTRODUCTION

I. Background

On November 4, 2008 (Election Day), two African-American men stood outside of the entrance to a polling site on Fairmount Street in Philadelphia, Pennsylvania. The men were members of the New Black Panther Party (NBPP) and wore matching paramilitary clothing, such as trousers tucked into their boots and berets adorned with the NBPP insignia. One of the men carried a nightstick. Witnesses videotaped the men standing outside the polling place and uploaded the videos to the Internet.

Shortly thereafter, the Voting Section of the Department of Justice's Civil Rights Division (the Division or CRT) initiated an investigation into the matter. On January 7, 2009, days before the inauguration of President Barack Obama, the Division filed a civil action against the two NBPP members in the videos, the NBPP's national chairman, and the organization itself. The complaint filed by the Division alleged violations of Section 11(b) of the Voting Rights Act, which in general terms prohibits intimidation or attempted intimidation of voters or other individuals assisting voters.[1]

None of the four defendants in the NBPP case answered the complaint in the time period required by the Federal Rules of Civil Procedure. As a result, the Department moved the court for an entry of default as to all four defendants and, on April 2, 2009, the clerk of the court entered a default against all of the defendants. The entry of default, however, did not conclude the civil proceeding. It also was necessary for the Department to obtain from the Court a default judgment against the defendants, including an order for the injunctive relief that the Department was seeking. On April 17, 2009, the Court ordered the government to file formal motion papers seeking the default judgment and injunctive relief, and the clerk of the court indicated to the Department that the Court would likely hold a hearing regarding the Department's motion.

On May 15, 2009, the Division moved the court to dismiss the complaint against three of the four defendants – namely, the NBPP, its chairman, and one of the two members that were present at the polling station in Philadelphia on Election Day. The Division continued the action against the fourth defendant, the individual who stood outside the polling site holding a nightstick, and

[1] *See* 42 U.S.C. 1973i(b).

sought a default judgment and an injunction prohibiting him from bringing a weapon to a polling place in Philadelphia through 2013. The court granted the Division's requested relief on May 18, 2009.

The Division's handling of the NBPP case attracted attention from Congress and national media. For example, several members of Congress sent letters to Department personnel, including Attorney General Eric Holder, requesting information about the NBPP matter. Similarly, in June 2009, the U.S. Commission on Civil Rights (USCCR) initiated an investigation into the Department's handling of the NBPP case.

In addition, this office received several letters starting in July 2009 from Members of Congress, including Representatives Lamar Smith and Frank R. Wolf, who requested that the Office of the Inspector General (OIG) investigate the Department's decision-making in the NBPP matter. In his responses to those congressional requests, then-Inspector General Glenn A. Fine declined to initiate such an investigation, noting that the OIG's governing statute did not authorize the OIG to investigate allegations of misconduct relating to Department attorneys' exercise of their authority in handling of litigation or legal decisions and that the allegations raised in their letters therefore fell within the exclusive jurisdiction of the Department's Office of Professional Responsibility (OPR). The OIG also referred the matter to OPR for its review. In August 2009, OPR told the House Judiciary Committee in a letter that it had initiated a review into the NBPP matter.

On July 6, 2010, a former trial attorney in the Department's Voting Section who had worked on the NBPP case testified at a USCCR hearing concerning the case and the Voting Section's enforcement of voting laws. In that appearance, the attorney stated that he perceived that there was an "open hostility [in the Division] toward equal enforcement in a colorblind way of the voting rights laws." In addition, the attorney testified that he was told that CRT leadership had instructed Voting Section management that the Voting Section would not pursue cases against Black defendants for the benefit of White victims, and that CRT leadership told the Voting Section that the new administration had "no interest in enforcing" a statutory provision regarding the removal of ineligible voters from voter rolls because those provisions purportedly are more strongly supported by Republicans and remove more potential Democratic voters from the voting rolls.[2]

Following the attorney's appearance before the USCCR, Representatives Smith and Wolf wrote to the OIG to request an investigation into the NBPP matter and various aspects of the Voting Section's enforcement of civil rights

[2] For purposes of this report, we have adopted the terminology typically employed by the Division, namely "Blacks," "Hispanics," and "Whites."

laws. On September 13, 2010, then-Inspector General Fine sent a letter to Representatives Smith and Wolf notifying them that the OIG planned to initiate an investigation, stating:

> In your recent letters you have also identified broader issues that go beyond the Department's handling of the New Black Panther Party litigation. Through this letter I want to inform you that the OIG plans to initiate a review of the enforcement of civil rights laws by the Voting Section of the Department's Civil Rights Division. This review will examine, among other issues, the types of cases brought by the Voting Section and any changes in these types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner; and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters.

The letter also stated: "While our review will include information about cases such as the New Black Panther Party matter and others, our review will be focused more broadly on the overall enforcement of civil rights laws by the Voting Section rather than a single case."

Also on September 13, 2010, then-Inspector General Fine sent a memorandum to CRT Assistant Attorney General Thomas Perez, informing him that the OIG had initiated an investigation. The memorandum to Perez stated:

> The Office of the Inspector General (OIG) is initiating a review of the enforcement of civil rights laws by the Voting Section of the Department's Civil Rights Division. Our preliminary objectives are to examine the types of cases brought by the Voting Section and any changes in the types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section has enforced the civil rights laws in a nondiscriminatory manner; and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters.

On December 3, 2010, the USCCR released an interim report concerning its investigation into the NBPP matter, which stated:

> The nature of these charges [concerning the handling of the NBPP matter and allegations of hostility in the Division to enforcing civil rights laws on behalf of White citizens] paints a picture of a Civil Rights Division at war with its core mission of guaranteeing equal protection of the laws for all Americans. During the Bush administration, the press reported ideological conflict within the

> Division. If the testimony before the Commission is true, the current conflicts extend beyond policy differences to encompass allegations of inappropriately selective enforcement of laws, harassment of dissenting employees, and alliances with outside interest groups, at odds with the rule of law.

On March 17, 2011, OPR issued a report concerning its investigation into the NBPP matter. A redacted version of the OPR report was subsequently released publicly on the House Committee on the Judiciary Democratic website.[3] OPR concluded that Department officials did not commit professional misconduct or exercise poor judgment in connection with the NBPP matter, but rather acted appropriately in the exercise of their supervisory duties. OPR further found that the Department's decision to dismiss three of the four defendants and to seek more narrowly tailored injunctive relief against the fourth defendant was based on a good-faith assessment of the law and facts of the case and had a reasonable basis. According to its report, OPR found no evidence that partisan politics was a motivating factor in reaching the Department's decision or that the decision-makers were influenced by the race of the defendants or any considerations other than an assessment of the available evidence and the applicable law. OPR also stated that it had concluded that the decision to initiate the NBPP case was based upon a good-faith assessment of the facts and the law, that it found no evidence that partisan politics was a motivating factor in authorizing the suit against the four defendants.

In February 2011, the former Voting Section attorney who appeared before the USCCR in July 2010 wrote an article on an Internet website that stated that that he had obtained a log of the Civil Rights Division's Freedom of Information Act (FOIA) data and alleged that "[t]he documents show a pattern of politicized compliance within the Department's Civil Rights Division." In particular, the attorney wrote, "FOIA requests from liberals or politically connected civil rights groups are often given same day turn-around by the Department. But requests from conservatives or Republicans face long delays, if they are fulfilled at all."[4] Congressman Wolf wrote a letter to the OIG requesting that it investigate the allegations in the attorney's article. On April 29, 2011, the OIG responded to Congressman Wolf indicating that we intended to broaden the scope of our review of the Voting Section to include an examination of whether requests for records submitted to the Voting Section

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[3] http://democrats.judiciary.house.gov/letter/department-justice-opr-report-new-black-panther-party-matter (accessed on March 8, 2013). In addition, Assistant Attorney General Thomas Perez discussed the findings of the OPR report in public testimony in July 2011.

[4] The attorney later testified before the Senate Judiciary Committee concerning his FOIA allegations.

were treated differently based upon the perceived political affiliation or ideology of the requester.

In August 2011, the former Voting Section attorney mentioned above and another former CRT attorney wrote a series of Internet articles alleging that, based on their review of Civil Rights Division documents, the Division had engaged in politicized or ideological hiring since the beginning of the current presidential administration. The attorneys asserted that the Civil Rights Division since January 2009 had hired attorneys that were liberal "activists who [had] embraced radical political agendas far outside of the legal mainstream," and that the improper hiring occurred in all of the CRT sections, including the Voting Section. On August 11, 2011, U.S. Senator Charles Grassley wrote to the OIG requesting that it investigate the allegations concerning politicized hiring in the CRT. In October 2011, the OIG informed Senator Grassley that it would include a review of the Voting Section's hiring practices since January 2009.

This report describes the results of the OIG's review.

II. Prior Related OIG Reviews

In 2008, the OIG, together with OPR, released three reports concerning improper hiring practices in the Department.[5] One OIG-OPR report revealed that former Assistant Attorney General for Civil Rights Bradley Schlozman considered political and ideological affiliations in several personnel actions, including the transfer of CRT career employees, case assignments, and performance awards. A second OIG-OPR report concluded that Monica Goodling, the Department's White House Liaison and Senior Counsel to the Attorney General, also considered political and ideological affiliations in Department personnel actions, including hiring career personnel and approving details of career staff, in violation of federal law and Department policy. Some of the personnel mentioned in this report worked in the Civil Rights Division. A third report addressed allegations of politicized hiring in the Department Honors Program and Summer Law Intern Program.

[5] *See* OIG-OPR Report, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*, July 2008 (released publicly January 13, 2009); OIG-OPR Report, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General*, July 2008; OIG-OPR Report, *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program*, June 2008.

III. Methodology of the Investigation

As described in the OIG's initiation memorandum, the OIG's review initially examined several main issues: the types of cases brought by the Voting Section and any changes in the types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner; and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters. The review was subsequently expanded to address allegations about the processing of FOIA requests by the Voting Section, and the hiring practices by the Voting Section from 2009 to 2011.

To investigate these issues, the OIG conducted more than 135 interviews with more than 80 individuals currently or previously employed by the Department. Over the course of our inquiry, we interviewed several senior officials in the Department, including Attorney General Eric H. Holder Jr., Associate Attorney General Thomas Perrelli, former Associate Deputy Attorney General (and current Solicitor General) Donald Verrilli, Counsel to the Attorney General Aaron Lewis, Deputy Associate Attorney General Samuel Hirsch, and Assistant Attorney General Thomas Perez, and former Acting Assistant Attorney General Loretta King. The OIG also interviewed senior Department personnel from the prior presidential administration, including Assistant Attorneys General for Civil Rights Ralph Boyd, Alex Acosta, Bradley Schlozman, and Wan Kim, as well as Acting Assistant Attorney General for Civil Rights Grace Chung Becker.

We received more than 100,000 pages of documents during the course of our review from the Department that we relied upon in drafting this report. These included materials related to Voting Section cases and matters, Division enforcement policies and procedures, and Division personnel matters. In addition to the documents received from the Department, we reviewed hundreds of thousands of e-mails from the accounts of current and former Department personnel, as well as court decisions and filings in numerous cases.

IV. Organization of this Report

This report is divided into seven chapters, including this Introduction. Chapter Two provides relevant background information about the Civil Rights Division, the Voting Section, and the voting rights laws within the Voting Section's enforcement jurisdiction.

Chapter Three examines the Voting Section's enforcement of selected voting rights laws over time. This chapter includes an analysis of whether the enforcement priorities of the Voting Section have changed over time and

whether the Civil Rights Division has enforced voting rights laws in a non-discriminatory fashion.

In Chapter Four, we address allegations we received that Voting Section employees were harassed, mistreated, marginalized, or removed due to their political ideology or the positions they advocated in connection with Voting Section matters. We describe in detail a number of events we uncovered over the course of the investigation and then provide our analysis of the evidence.

In Chapter Five, we describe the results of our investigation into whether CRT staff considered the political affiliations or ideology of applicants for Voting Section career attorney positions advertised between January 20, 2009, and December 31, 2011.

Chapter Six describes the results of our investigation into whether Civil Rights Division staff, primarily the Voting Section, treated responses to requests for records differently based upon the political affiliation or ideology of the requester.

In Chapter Seven, we summarize our overall conclusions regarding the Civil Rights Division's enforcement of voting rights laws.

Appendix A contains the Department's response to our report. Appendices B through E contain material described in the body of our report.

CHAPTER TWO
BACKGROUND

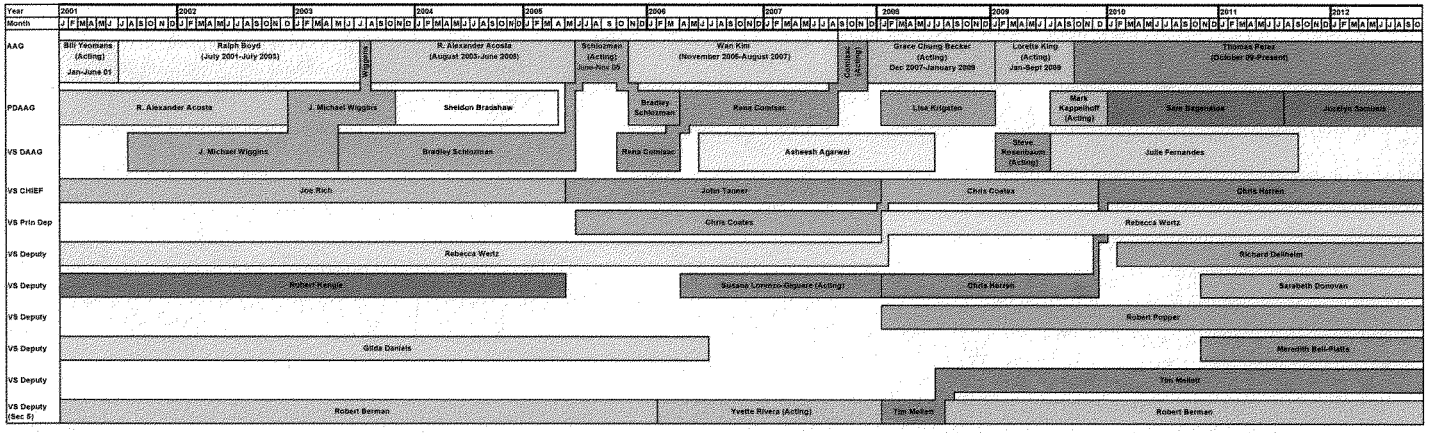
I. Organization of the Civil Rights Division and the Voting Section

Created by the enactment of the Civil Rights Act of 1957, the Department's Civil Rights Division (the "Division" or "CRT") enforces a wide array of laws that protect the civil rights of all individuals, including the enforcement of federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin. During the time period of our review, the CRT was organized into 11 separate sections, one of which is the Voting Section.

The Voting Section is responsible for enforcing federal voting laws, including investigating and litigating civil matters throughout the United States and its territories, conducting administrative review of changes in voting practices and procedures in certain jurisdictions, and monitoring elections in various parts of the country. The Voting Section is staffed with approximately 100 employees, comprising attorneys, social scientists, civil rights analysts, and support personnel. Since 1995, the Voting Section has generally employed 35-40 attorneys at any given time, although the number of Section attorneys in that period has fluctuated between 31 (1998) and 45 attorneys (2010). The structure of the Section's management team has varied over time, but Section leadership has generally included a Section Chief and several Deputy Section Chiefs and Special Litigation Counsels. The Section's staff, including its management team, is comprised entirely of career employees.

Table 2.1 shows the management of the Civil Rights Division and the Voting Section during the period from 2001 to 2011.

Civil Rights Division and Voting Section Management
January 2001-December 2012



II. Voting Rights Laws

A. Voting Rights Act of 1965

President Lyndon B. Johnson signed the Voting Rights Act (VRA) into law on August 6, 1965. The VRA prohibited voting practices by states and municipalities that had historically discriminated against Blacks and were designed or implemented to disenfranchise Black citizens. In particular, the statute prohibited voting practices that were imposed with the intent or effect of denying or abridging the right of any U.S. citizen to vote on account of race or color, such as literacy tests.

In addition, the VRA provides for enhanced federal oversight of voting practices in certain states, counties, and other political subdivisions that meet specific criteria. For instance, under Section 5 of the statute, the political subdivisions subject to these special provisions, commonly called "covered jurisdictions," are required to submit any proposed changes to voting practices or procedures to the Department or federal district court for review before the proposed changes can be implemented. Other provisions in the VRA authorize the federal government to send election observers to polling places in covered jurisdictions to monitor election-day practices.

Congress has renewed the VRA and expanded its scope multiple times since its original enactment in 1965. In 1970 and 1975, Congress extended the provisions concerning enhanced oversight over covered jurisdictions for five and seven years, respectively. Congress renewed those special provisions for an additional 25 years in 1982 and again in 2006.

These and other voting-related statutes are discussed in greater detail below.

1. VRA Section 2

Section 2 is widely considered to be the cornerstone of the VRA and prohibits voting practices and procedures, including redistricting plans, at-large election systems, and voter-registration procedures, that discriminate on the basis of race, color, or membership in a language-minority group.

The language of Section 2 enacted in 1965 provided: "No voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." The 1975 amendments to the VRA expanded the scope of this provision to prohibit practices or procedures that deny or abridge the right of any citizen of the United States to vote because of membership in a language-minority group. In 1982, Congress amended the provision to provide that a plaintiff could establish a Section 2 violation if the evidence established that, in

the context of the "totality of the circumstance of the local electoral process," the standard, practice, or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process.

Section 2 prohibits election-related practices and procedures that are intended to be racially discriminatory, as well as those that have a racially discriminatory impact. In general terms, there are two types of practices prohibited by Section 2: vote denial and vote dilution. Vote-denial practices, including literacy tests, poll taxes, and language barriers, are designed or implemented to prevent people from voting or having their votes counted on the basis of race or language. Vote-dilution practices diminish minorities' political influence where they are allowed to vote, such as at-large elections and redistricting plans that have the intention or effect of reducing the political influence of minority groups. Unlike some other provisions of the VRA, Section 2 is permanent and applies throughout the United States.

The Voting Section enforces Section 2 by initiating civil litigation, as well as filing amicus briefs in Section 2 cases initiated by private plaintiffs. The Voting Section has also participated in Section 2 matters brought by private plaintiffs through the submission of statements of interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit.

2. VRA Section 5

The VRA contains special provisions that impose restrictions on certain jurisdictions, particularly states and counties that have a history of racial discrimination in voting. Under the current VRA formula, all or parts of 16 states are subject to these special restrictions. Those entities are commonly called "covered jurisdictions."

The most prominent of the special provisions is Section 5, which freezes changes in election practices or procedures in covered jurisdictions until the new procedures have been determined to have neither discriminatory purpose nor effect.[6] Covered jurisdictions can submit proposed voting changes for

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[6] Section 5 states in pertinent part that, whenever a covered jurisdiction seeks to enact a voting change, including enacting or seeking to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure:

> (a) . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such

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administrative review by the United States Attorney General, or a declaratory lawsuit before the United States District Court for the District of Columbia. The Department's administrative review is described in greater detail below.[7]

a. Submissions

As noted above, the Voting Rights Act requires certain covered jurisdictions to submit all voting changes to the Department or the Federal District Court in Washington, D.C. for preclearance review before such changes can become effective. Voting changes that have not been reviewed under Section 5 are legally unenforceable. More than 99 percent of proposed changes are submitted to the Department for administrative review, rather than the federal district court, largely because the Department's administrative reviews are less expensive for the covered jurisdiction and generally result in a faster outcome.

Upon receiving changes submitted pursuant to VRA Section 5, the Voting Section reviews the proposed change to determine whether the change is free of discriminatory purpose and effect. The legal standard for the Section 5 review is whether the new plan has the purpose or the effect of denying or abridging the right to vote on account of race or color.

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judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.[]

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

42 U.S.C.A. § 1973c.

[7] On November 9, 2012, the U.S. Supreme Court granted certiorari in the matter of *Shelby County* v. *Holder* on the question of "Whether Congress' decision in 2006 to reauthorize Section 5 of the Voting Rights Act under the pre-existing coverage formula of Section 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the United States Constitution." The Court heard argument in the case on February 27, 2013.

In evaluating whether a proposed voting change has a discriminatory purpose, the Department examines the circumstances surrounding the submitting authority's adoption of the change to determine whether direct or circumstantial evidence exists of any discriminatory purpose of denying or abridging the right to vote on account of race or color, or membership in a language-minority group.[8] With regard to the discriminatory effect prong of the Section 5 analysis, a proposed voting change will be deemed to have a discriminatory effect if the change would leave members of a racial minority group in a worse position than they had been before the change with respect to "their effective exercise of the electoral franchise." *See Beer* v. *United States*, 425 U.S. 130, 141 (1976); *see also* 28 C.F.R. Part 51.54, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended Subpart F, Determinations by the Attorney General, Discriminatory Effect. This discriminatory effect is commonly called "retrogression" or a "retrogressive effect." *See id.*

The submitting jurisdiction bears the burden of establishing that the proposed change is non-discriminatory. If the Department determines that the proposed change satisfies Section 5's requirements, it will generally issue a letter to the submitting jurisdiction indicating that it has no objection to the proposed change, which is generally called "preclearing" the voting change. Such preclearance then authorizes the jurisdiction to implement the proposed change. If the Department determines that the submitting jurisdiction has not satisfied its burden of establishing that the proposed change is free of discriminatory purpose or effect, however, the Department will issue a letter to the jurisdiction interposing an objection, which pursuant to the VRA blocks the jurisdiction from implementing the proposed change. If the Department interposes an objection, a submitting jurisdiction may seek preclearance in federal court. If a covered jurisdiction seeks to implement a voting change without preclearance from either the Department or a federal court, the Department is authorized to pursue a civil suit to prevent the implementation of that change. The Department's enforcement authority is described in greater detail below.

Under Section 5, the Department must review the submission within 60 days. If the Department does not interpose an objection to the proposed change within 60 days, the change is precleared as a matter of law. The Voting Section is authorized to request additional information from the submitting jurisdiction, which is generally called a "more-information request" and tolls the Department's 60-day deadline until the jurisdiction provides the requested information.

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[8] For instance, the Voting Section will generally review public statements of members of the adopting body or others who may have played a significant role in the process for evidence of an intent to deny or abridge the right to vote of a racial minority group.

b. Enforcement

As noted above, voting changes in covered jurisdictions that have not been reviewed under Section 5 are legally unenforceable. If a covered jurisdiction implements such a change without obtaining preclearance from the Department or a favorable ruling from the federal district court, the Department is authorized under the VRA to sue the jurisdiction in federal court to enjoin the Section 5 violation. Such lawsuits are commonly called Section 5 enforcement actions, and they are heard by a three-judge panel in federal district court. If a panel determines that the jurisdiction is violating Section 5, the typical remedy includes an injunction against further use of the voting change at issue.

3. VRA Sections 3 and 8

Sections 3 and 8 of the VRA authorize the federal government to dispatch observers to monitor voting-related procedures in political subdivisions that have been certified by either a federal court or the Department. The Voting Section is responsible for investigating whether federal observers are needed in a particular jurisdiction, by determining whether it is likely that minority voters will not be allowed to cast a ballot without interference in particular polling places on Election Day.[9] If the Section concludes that federal observers are needed in a particular jurisdiction, it will notify the Office of Personnel Management (OPM) of that determination. Approximately 160 counties and parishes in 15 states are currently certified for federal observers. *See id.* OPM then recruits observers to monitor the jurisdiction's voting practices and write reports of the activities they witness, which are then provided to the Voting Section. The Voting Section uses the observers' reports to determine whether further enforcement of the Voting Rights Act is needed in the jurisdiction.

4. VRA Section 11(b)

Section 11(b) of the VRA prohibits intimidation or attempted intimidation of voters or other individuals assisting voters, stating:

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

[9] *See* Department of Justice, Civil Rights Division, "About Federal Observers and Election Monitoring," http://www.justice.gov/crt/about/vot/examine/activ_exam.php (accessed on March 8, 2013).

The Voting Section has pursued only a handful of Section 11(b) cases since its enactment in 1965, almost always in conjunction with Section 2 enforcement, as discussed above. Two of the most prominent cases involving 11(b) claims are the Noxubee, Mississippi (2006) and New Black Panthers Party (2009) cases, which are described in Chapter Three of this report.

5. VRA Sections 203 and 4(f)(4)

In 1975, Congress amended the VRA, expanding its scope to protect language-minority citizens. Under VRA Sections 203 and 4(f)(4), certain jurisdictions must provide bilingual written materials and other assistance for non-English-speaking citizens. The language minorities covered under the VRA are American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens. The Census Bureau determines which jurisdictions are covered under the language-minority provisions, based upon a formula set out in the VRA. Following the 2010 census, the Director of the Census Bureau determined that more than 300 jurisdictions in 24 states were subject to the VRA Section 203. *See* "Voting Rights Act Amendments of 2006, Determinations Under Section 203," 76 Fed. Reg. 198 (October 13, 2011), p. 63602, http://www.justice.gov/crt/about/vot/sec_203/2011_notice.pdf (accessed on March 8, 2013).

B. National Voter Registration Act

The National Voter Registration Act, also known as the NVRA or the Motor Voter Act, was enacted in 1993. The general purposes of the NVRA are two-fold: to increase the number of eligible citizens who register to vote in federal elections and to protect the integrity of the electoral process. With respect to its purpose of increasing voter registration, the NVRA requires states to provide voter registration opportunities at a wide range of state facilities, including motor vehicle offices (Section 5) and public assistance and disability offices (Section 7). In addition, the NVRA mandates that states accept voter registration forms submitted through the mail (Section 6) and register voters whose applications are received at least 30 days before an election (Section 8). Section 8(a)(4) of the NVRA is the primary provision addressing the purpose of protecting electoral integrity. Section 8(a)(4), which is commonly referred to as the list-maintenance or list-purging provision, requires states to employ a reasonable effort to remove ineligible voters from their voter rolls, such as those who have died or moved outside the jurisdiction. Section 8 also includes certain safeguards to which states must adhere in conducting their list-maintenance efforts, in order to prevent improper list purging and the removal of eligible voters.

C. Uniformed and Overseas Citizens Absentee Voting Act

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted by Congress in 1986 and requires that the states and territories allow certain groups of citizens to register and vote absentee in elections for federal offices. The citizens covered under UOCAVA include military personnel and their families, and citizens residing outside the United States. In 2009, Congress amended UOCAVA to establish new voter registration and absentee ballot procedures with the enactment of the Military and Overseas Voter Empowerment Act (commonly called the "MOVE Act").

D. Help America Vote Act of 2002

The Help America Vote Act of 2002 (HAVA) is designed to improve the administration of elections in the United States by establishing minimum standards for states to follow in several key areas of election administration.

CHAPTER THREE
ENFORCEMENT OF SELECTED VOTING RIGHTS LAWS OVER TIME

I. Introduction

In this chapter we examine the Voting Section's enforcement of selected voting rights laws over time. Our focus is to determine how the enforcement priorities of the Voting Section have changed over time and to determine whether the voting rights laws have been enforced in a non-discriminatory fashion.

The OIG utilized the following methodology in this chapter. First, we collected and analyzed extensive data regarding the activities of the Voting Section, going back as far as 1993 where appropriate. We interviewed current and former employees of the Voting Section and the Civil Rights Division in order to obtain greater insight into the overall activities and enforcement priorities of the Section and to identify particular case decisions or other incidents that have given rise to allegations that improper racial, political, or ideological considerations drove actions taken by CRT managers or Voting Section staff in the enforcement of voting rights laws. From these interviews, we selected a group of cases and incidents for deeper investigation.

We then reviewed thousands of e-mails and internal documents relating to the selected cases or incidents, and interviewed numerous witnesses who were involved in the matters. During our investigation, we looked for direct evidence of improper considerations, such as contemporaneous statements in e-mails, memoranda, or other documents that would support an inference of an improper racial bias or political agenda. We also analyzed the positions taken in the cases, and the stated reasons for case decisions, to determine whether they were, as some have alleged, a pretext for improper but unstated considerations. We reviewed evidence across multiple cases and incidents to assess their cumulative significance and to determine whether the evidence revealed a pattern of decisions supporting an inference of discriminatory enforcement of the voting rights laws.

In reviewing selected cases, we considered a large volume of information that the Department informed us it considers to be pre-decisional deliberative materials or otherwise subject to claims of privilege, including the contents of many internal Division e-mails, memoranda, and other communications in which career attorneys and Division leadership set forth preliminary analyses and advocated positions on particular issues. In an effort to protect, where appropriate, the integrity and candor of the confidential pre-decisional process,

in many cases in this report we did not describe in full detail all the materials we reviewed, as well as the underlying debates and analyses, where we were able to fairly describe the issues and the reasons for our analyses and decisions without doing so. Moreover, in some cases discussed in this report, the Department previously had made public some details of the pre-decisional process, which enabled us to address the facts in those cases in a more detailed and specific manner. As a result, the degree to which we discuss particular decisions in detail varies widely from case to case. Lastly, in some matters that never became filed cases, we believed it was appropriate and fair to take steps to conceal the identity of the potential defendants.

In Section II of this chapter we provide an overall review of enforcement actions, focusing on data regarding the changing mix of court cases filed under the various voting rights statutes within the Voting Section's jurisdiction over time. We then move to a more detailed examination of the Voting Section's activities with respect to the primary statutory provisions that it enforces. In Section III, we address litigation under Sections 2 and 11(b) of the Voting Rights Act; in Section IV, we examine the Section's activities in connection with preclearance of voting changes under Section 5 of the VRA; in Section V, we address enforcement of the NVRA; and in Section VI, we examine the Voting Section's enforcement of several language-minority provisions of the VRA. In Section VII, we discuss the Section's enforcement of UOCAVA. In Section VIII, we present our conclusions. In summary, we found that, while there were variations and trends in enforcement of the voting rights statutes over time, and that these sometimes reflected varying enforcement priorities, there was not sufficient evidence to conclude that these changes were based on discriminatory or other improper bases.

II. Overall Review of Enforcement Actions

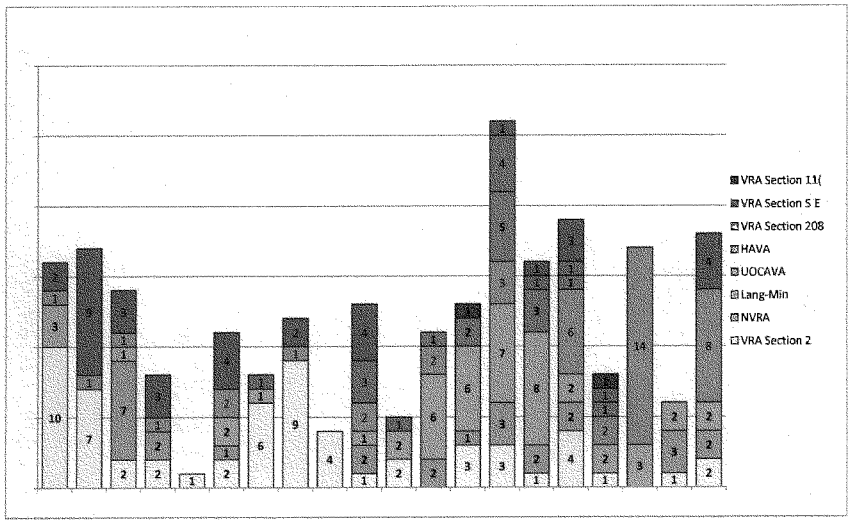
Figure 3.1 presents the number of enforcement actions that the Voting Section brought or participated in for selected statutory provisions during each calendar year from 1993 through 2012. The statutes reflected in Figure 3.1 include Sections 2, 4(e), 4(f)(4), 5,[10] 11(b), 203, and 208 of the VRA, as well as the NVRA, HAVA, and UOCAVA.[11] This list includes all of the significant efforts by the Voting Section to enforce the voting rights laws through litigation. For

[10] The OIG's analysis includes the Section's affirmative actions to enforce VRA Section 5, including filing claims in court and amicus briefs in private litigations, but does not include its review of voting change submissions for preclearance under VRA Section 5, the numbers of which are beyond the Section's control and hence do not reflect a choice to emphasize that particular statute. In addition, Section 5 preclearance submissions number in the thousands and would overwhelm the other data in this figure.

[11] The analysis of UOCAVA enforcement includes actions taken to enforce provisions of the MOVE Act, which was enacted in 2009.

purposes of this figure, we defined enforcement actions to include the Section's affirmative efforts to enforce voting-related laws against specific jurisdictions and defendants, including filing lawsuits or counterclaims in court, submitting statements of interest or briefs as amicus curiae in third-party litigation, and executing out-of-court settlement agreements.[12]

Figure 3.1 New Enforcement Actions by the Voting Section, 1993-2012



This chart is not intended to represent the complete workload of the Voting Section, and year-to-year variations in the total number of cases initiated by the Section should not be interpreted to represent variation in the quantity of work performed by the Section's personnel. The purpose of this chart is solely to provide a graphic representation of changes in the mix of enforcement activities that reflect the exercise of enforcement discretion by Division leadership. The chart omits many activities that do not involve the exercise of affirmative enforcement discretion, including: (1) administrative determinations on submissions from jurisdictions seeking Section 5 preclearance for voting changes; (2) defensive litigation initiated by jurisdictions seeking judicial preclearance under Section 5 for voting changes such as redistricting plans; (3) constitutional challenges to statutes

[12] We note that the Section submitted briefs as amicus curiae in several cases from 1993 to 2012 that advocated legal positions that we did not include as enforcement actions, such as defending the constitutionality of a statute.

administered by the Voting Sections, especially Section 5; and (4) "bailout" lawsuits under Section 4 of the VRA initiated by jurisdictions seeking to be removed from Section 5 coverage.[13] We found that these non-discretionary activities consume a large portion of Voting Section time and resources.[14] For example, the Voting Section typically addresses thousands of Section 5 preclearance submissions each year.

In addition, in recent years the number of new cases in the Section's defensive docket (categories (2) through (4) above) has exceeded the number of new enforcement cases that the Section has brought. Surges in the number and complexity of these matters from year to year inevitably affect the availability of Voting Section resources for affirmative litigation of cases. According to information provided by the Department, there have been a total of 24 bailout actions (category (4) above) filed in the District of Columbia since 2009, representing more than a three-fold increase in the frequency of such cases. The Department also reported that there has been a similar increase in the rate of declaratory judgment actions under Section 5 (category (2) above) since 2010, and in the number of constitutional challenges to Section 5 (category (3) above). Statistics provided by the Department indicate that the Voting Section's defensive litigation docket did not begin exceeding its affirmative docket until FY 2010.

Figure 3.1 also does not capture some activities by the Voting Section personnel that do not result in formal litigation or settlement agreements. Examples include numerous investigations of potential violations of voting rights laws that do not yield sufficient evidence to support filing a lawsuit. For example, Assistant Attorney General (AAG) Thomas Perez stated in April 2012 that based on 2010 census data, the Voting Section has opened more than 100 new Section 2 investigations. He also has noted that there were four complex Section 5 trials in 2012, which affected resources available for other work.

We found that enforcement activity that does not ripen into formal litigation, such as new investigations or pre-litigation negotiations, have not been recorded in a sufficiently consistent manner to permit meaningful

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[13] Figure 3.1 does include the small number of Section 5 judicial enforcement actions that the Voting Section files when covered jurisdictions fail to obtain Section 5 pre-clearance prior to implementing a voting change.

[14] Our exclusion of defensive litigation from Figure 3.1 (as well as our use of calendar rather than fiscal years) is the reason the numbers in Figure 3.1 vary significantly from the numbers given in public testimony describing the number of cases "handled" by the Voting Section in recent years. *See* Statement of Thomas E. Perez, Assistant Attorney General, Civil Rights Division, before the Subcommittee on the Constitution, Committee on the Judiciary, United States House Of Representatives, Oversight Hearing on the U.S. Department of Justice Civil Rights Division (July 26, 2012).

comparisons across years or administrations and, therefore, such actions are not reflected in the statistics presented in this report.[15]

Figure 3.1 reveals a very wide variation from year to year both in the number of total lawsuits filed and in the mix of cases. Such year-to-year variations do not necessarily reflect a change in enforcement priorities. Some kinds of voting rights cases are extremely complex and can consume significant resources and take several years to resolve. A large number of complex cases filed one year may lead to a very small number of new cases filed the next, due to the need to devote resources to litigate existing cases rather than develop new ones. Other factors that may affect numbers from year to year include the occurrence of federal elections and the release of new census data.

In the remainder of this chapter we examine trends and significant individual cases relating to particular statutes within the Voting Section's purview, including Sections 2 and 11(b) of the VRA; Section 5 of the VRA; the NVRA; the language minority provisions of the VRA; and UOCAVA.

III. Enforcement of Sections 2 and 11(b) of the VRA

In this section we examine the Voting Section's enforcement of Sections 2 and 11(b) of the VRA. We grouped these provisions together for several reasons. They relate to conduct that directly impairs the ability of persons to vote for their candidates of choice; they are sometimes enforced in the same cases; and the enforcement decisions relating to them have been the subject of a debate about whether the statutes should be used only or primarily for the benefit of minority victims, or whether they also should be used on behalf of White victims and against minority defendants. Finally, the number of Section 11(b) cases that have ever been filed is extremely small, so we determined it did not make sense to treat Section 11(b) as a separate category for purposes of analyzing available data.

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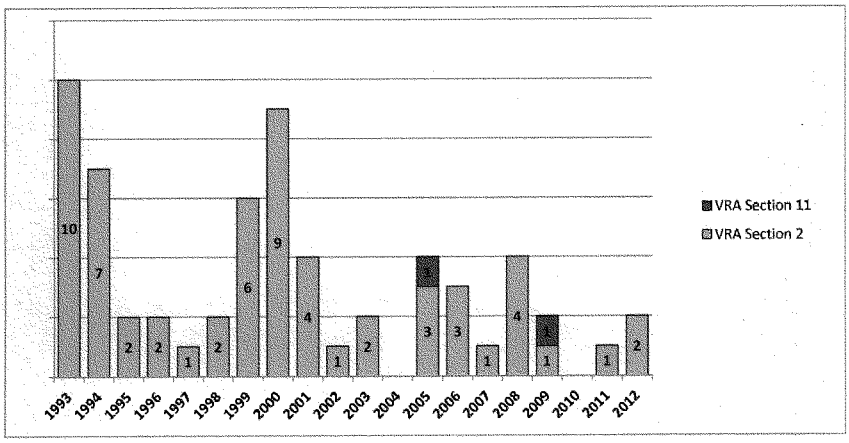
[15] AAG Perez has testified that the Voting Section opened 172 new investigations in Fiscal Year 2011, exceeding the number of investigations opened in any fiscal year during at least the last 2 dozen years. *See* July 26, 2012, testimony cited above in footnote 14. As noted, we did not find that the available records were sufficient to support a comparison of this type.

Although we have excluded investigative activity from Figure 3.1, we note that investigative activity itself may be resource and time-intensive and, thus, that significant numbers of investigations, especially when driven by periodic events such as the census, could skew year-to-year comparisons of enforcement activity filed.

A. Data Regarding Enforcement Trends in Sections 2 and 11(b) Cases

According to data provided by the Division, the Voting Section has participated in 63 actions to enforce Sections 2 and 11(b) since 1993. Of these actions, the vast majority were Section 2 cases only. The Voting Section brought only two Section 11(b) actions during this period and in one of those cases the Voting Section also brought Section 2 claims. Figure 3.2 below reflects the breakdown of these enforcement actions by year.

Figure 3.2 Sections 2 and 11(b) Enforcement Actions, 1993-2012



We found that this data concerning the enforcement of Sections 2 and 11(b) reflected several trends regarding the overall volume of enforcement actions since 1993, as well the racial classes protected in those matters.

Volume of Cases: The data reflected a noteworthy difference in the number of cases filed from 1993 through 2000, and from 2001 through 2012. In particular, from 1993 through 2000 the Voting Section filed 35 Section 2 lawsuits and 4 briefs as amicus curiae, which far outpaced the filings during both the subsequent 8 years (17 lawsuits and 1 out-of-court settlement)[16] and

[16] Former Counsel to the AAG Hans von Spakovsky noted in his OIG interview that during his tenure in the CRT front office (2002-2005), Division leadership approved two additional Section 2 cases that are not reflected in Figure 3.2 because the Voting Section subsequently withdrew its recommendation to pursue the matters due to changes in the underlying factual circumstances.

the 4-year period from 2009 through 2012 (only 1 complaint filed, as well as amicus curiae or statement-of-interest submissions in 3 other cases).[17]

Some current or former career employees in the Voting Section told us that they believed that some Civil Rights Division leaders during the 2001 to 2008 period were reluctant or resistant toward bringing Section 2 cases. Witnesses who worked in Division leadership during that period denied this allegation and said they believed the Division developed a strong record of enforcing Section 2 during that span of time. In that regard, Hans von Spakovsky, who worked with Division leadership as Counsel to the CRT AAG from 2002 to 2005, told the OIG that the number of opportunities to bring Section 2 cases has decreased considerably over time. For example, according to von Spakovsky, situations involving vote-denial have been rare since the 1960s and 1970s, and there are few opportunities to assert vote-dilution claims because those typically arise from the creation of at-large election districts and such districting is increasingly uncommon. Joseph Rich, who was Chief of the Voting Section from 1999 through April 2005 (and who we found sometimes clashed with von Spakovsky on enforcement issues), made similar statements in his OIG interview, observing that the opportunities to bring Section 2 cases, particularly vote-dilution claims, were declining at the time. Rich told the OIG that he believed those opportunities were decreasing because numerous vote-dilution cases had been brought in the 1980s and 1990s; there were fewer remaining at-large districts, which were traditional targets of Section 2 claims; and the Section 5 preclearance process had "weeded out" other situations that might have given rise to a Section 2 claim.

Moreover, we found it significant that following the change in administrations in 2009, there was no surge in new Section 2 cases as might be expected if valid cases had been suppressed or discouraged in the prior administration. Indeed, the number of Section 2 enforcement actions dwindled to just four matters from 2009 through 2012.

Julie Fernandes, who was Deputy Assistant Attorney General (DAAG) between 2009 and 2011, addressed the small number of Section 2 cases brought during this time period by the current administration when she was interviewed by the OIG in early 2011. She indicated that the Section was working on Section 2 lawsuits initiated during the prior administration, including cases involving Euclid, Ohio, and Port Chester, New York. According to Fernandes, the Division had not initiated new Section 2 cases because she believed Division leadership had inherited a highly dysfunctional section,

[17] The Department submitted a Statement of Interest in third-party litigation in 2011 pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit. We included that submission as an enforcement action because the Voting Section argued that the court should find that a specific jurisdiction, which was a party to the lawsuit, had violated Section 2.

which she largely attributed in her OIG interviews to management failures by Christopher Coates, who was Voting Section Chief from January 2008 until January 2010 (we discuss this topic in detail in Chapter Four). She stated further that the Section had several cases "in the hopper," including Section 2, Section 203, and NVRA cases. AAG Perez also has stated in public statements that the Voting Section initiated numerous investigations into Section 2 matters from 2009 through 2011.[18] Despite these claims, and the blame leveled by Fernandes towards Coates, only one new Section 2 enforcement action was brought by the Voting Section in 2010 and 2011, and we noted that, through the end of 2012, the Section had not filed any new Section 2 actions.[19]

We did not receive allegations during our review that the Division leadership since 2009 has been hostile or reluctant with respect to the enforcement of Section 2 cases, and we did not find evidence to suggest that. The current Division leadership told us that the increase in the defensive docket, as described above, along with a large number of new enforcement cases under UOCAVA, as described in Section VII of this chapter, have severely limited the resources available for new Section 2 enforcement cases. Nevertheless, we found the recent decline in Section 2 enforcement actions notable because of the fact that some of the same people who made allegations to us about the prior administration's handling of Section 2 cases had supervisory authority over the Voting Section during a time when few Section 2 cases were filed.

Racial Demographics of Section 2 and Section 11(b) Cases: Figures 3.3, 3.4, and 3.5 below present the racial composition of the protected classes in the Sections 2 and 11(b) matters pursued from 1993 through 2000, from 2001 through 2008, and from 2009 through 2012, respectively. The data reflect considerable differences between the number of Sections 2 and 11(b) matters pursued in those periods, with wide variances between the

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[18] *See, e.g.*, Statement of Thomas Perez, National Association of Secretaries of State 2012 Conference, Washington, DC, January 30, 2012, http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1201301.html (accessed on March 8, 2013) (stating: "We've opened more than 100 Section 2 investigations in the past year"); Prepared Remarks of Thomas Perez, Rutgers Law Voting Symposium, http://www.mainjustice.com/2012/04/13/prepared-remarks-by-assistant-attorney-general-for-civil-rights-thomas-perez-on-voter-rights/print/ (accessed on March 8, 2013), April 13, 2012.

[19] According to an October 23, 2012, letter to the OIG from Jocelyn Samuels, Principal DAAG for CRT, in fiscal year 2012 the Voting Section filed one brief in a Section 2 matter that was initiated in 1986 and several statements-of-interest in Section 2 litigation. We also note that in October 2012 the Division filed a statement of interest in a Section 2 case in Montana that was initiated by private parties.

enforcement of those provisions on behalf of African-Americans, Hispanics, and Native Americans.

Figure 3.3 Sections 2 and 11(b) Enforcement Actions, by Class Protected (1993-2000)

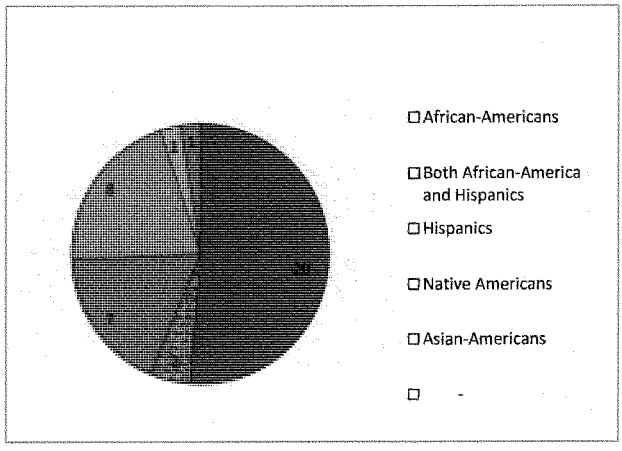


Figure 3.4 Sections 2 and 11(b) Enforcement Actions, by Class Protected (2001-2008)

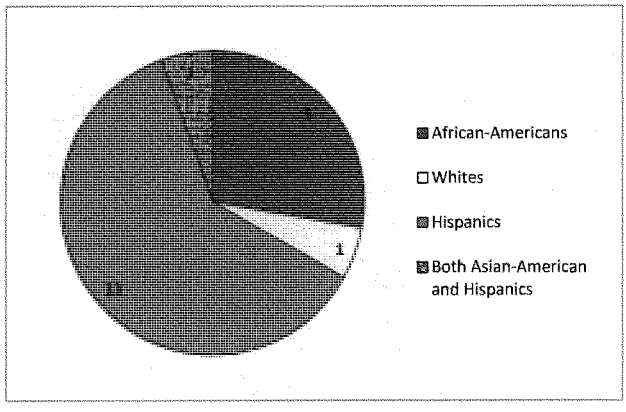
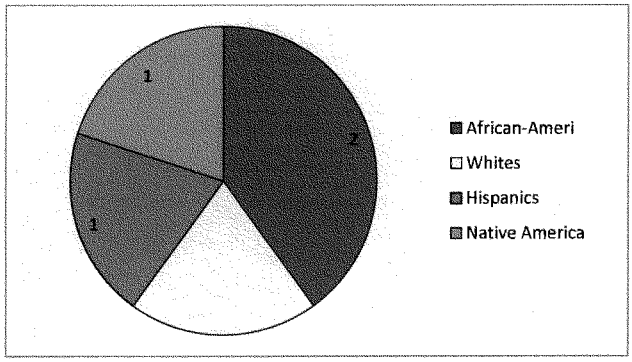


Figure 3.5 Sections 2 and 11(b) Enforcement Actions, by Class Protected (2009-2012)



According to the OIG's review of Voting Section enforcement data, the number of Section 2 enforcement actions on behalf of African-American voters decreased from 22 (1993-2000) to 5 (2001-2008) to 2 (2009-2012). Similarly, the number of Section 2 enforcement actions on behalf of Native Americans decreased from 8 (1993-2000) to 0 (2001-2008) and 1 (2009-2012). The number of Section 2 enforcement actions on behalf of Hispanics, however, increased from 9 (1993-2000) to 12 (2001-2008), which subsequently decreased to 1 in the current administration.

In addition, the Division under the previous administration filed two cases enforcing these provisions against minority defendants and on behalf of White victims. (The latter of these two cases was filed in early 2009, shortly before the change in administrations, which is why it appears in Figure 3.5.) Some career employees we interviewed cited these two cases, together with other decisions by Division leadership during the prior administration that rejected career staff proposals for enforcement action on behalf of minority victims, as evidence that Division leadership during this period was more interested in enforcing the voting laws on behalf of White voters or against minority defendants than on behalf of the historical victims of discrimination. Table 3.1 summarizes the cases approved for litigation by the Voting Section under Sections 2 and 11(b) from January 2001 to January 2009. The "class protected" column shows the racial or minority status of the class whose voting rights were being protected in each case.

Table 3.1
Sections 2 and 11(b) Matters January 2001 – January 2009

Year	Defendant or Jurisdiction	Type of Matter	Class Protected			Brief Description of Allegations
			Blacks	Hispanics	Whites	
2001	Charleston County, SC	Complaint filed	X			The county's at-large method of electing members of the county commission violated VRA Section 2 by diluting the voting strength of African-American voters. Complaint was filed immediately prior to change in administration in January 2001, but the following CRT Division leadership supervised trial and appeal, both of which were successful.
2001	Crockett, County, TN	Complaint filed	X			The method of electing the county's board of commissioners diluted the voting strength of African-American voters in violation of Section 2.
2001	Alamosa County, CO	Complaint filed		X		The at-large method of election of the Alamosa County Board of Commissioners violated Section 2 because it diluted the voting strength of Hispanic voters.
2001	City of Lawrence, MA	Complaint filed		X		In 1998, the Section brought a complaint against Lawrence in 1998, alleging that the City presented barriers to entry for Hispanic voters. The parties settled the case, and the matter was closed. In 2001, the City adopted new election plans and the Section brought a Supplemental Complaint that introduced new claims, alleging dilution of Hispanic vote resulting from the newly adopted voting plans.
2002	Osceola County, FL	Complaint filed		X		Complaint alleged violations of Section 2 by discriminating against Hispanic voters through hostile treatment at the polls and failing to provide adequate language assistance, as well as violations of VRA Section 208 by not permitting Hispanic voters to bring assistors of their choice into the polling places.
2004	Township B	Lawsuit Approved	X			The at-large method of election of the governing board violated Section 2 because it diluted the voting strength of Black voters.
2003	Berks County, PA	Complaint filed		X		The county discriminated against Hispanic voters through hostile treatment at the polls,

						failure to provide adequate language assistance, and by not permitting Hispanic voters to bring assistors of their choice into the polling place, in violation of VRA Sections 2, 4(e), and 208.
2003	Locality F	Lawsuit approved	X			CRT Front Office approved Voting Section recommendation to pursue Section 2 action against the locality's police jury and school board on behalf of Black citizens, but the Section later withdrew its recommendation after two Black citizens were elected to both of those entities and the matter was closed.
2003	City of Chelsea, MA	Out-of-court settlement		X		Department's investigation concluded that the city's method of electing members to its school committee violated Section 2 because it diluted the voting strength of Hispanic voters.
2005	Noxubee County, MS	Complaint filed			X	Various practices of county election and party officials, including absentee ballot fraud and improper voter assistance, discriminated against whites in violation of Sections 2 and 11(b).
2005	Osceola County, FL	Complaint filed		X		Lawsuit challenged the county's at-large system for electing its Board of Commissioners, arguing that it violated Section 2 by diluting Hispanic voting strength, and that the county had adopted and maintained the at-large method of election with a discriminatory purpose.
2005	City of Boston, MA	Complaint filed		X[20]		The city's election practices and procedures discriminated against members of language-minority groups, specifically persons of Hispanic, Chinese, and Vietnamese heritage, by denying and abridging their right to vote.
2006	Long County, GA	Complaint filed		X		Defendants' conduct effectively denied Hispanic voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2.
2006	City of Euclid, OH	Complaint filed	X			The city's mixed at-large/ward system of electing city council

[20] The complaint in this case also raised claims on behalf of Asian communities.

						members dilutes the voting strength of African-American citizens in violation of Section 2.
2006	Village of Port Chester, NY	Complaint filed		X		The Village's at-large system of electing its governing board of trustees violated Section 2 by diluting the voting strength of the jurisdiction's Hispanic citizens.
2007	City of Philadelphia, PA	Complaint filed		X		Defendants' conduct has had the effect of denying Hispanic voters an equal opportunity to elect candidates of their choice in violation of Section 2.
2008	Georgetown County School District, SC	Complaint filed	X			The defendants' at-large methods of electing the school board diluted the voting strength of African-American citizens.
2008	Osceola County, FL	Complaint filed		X		Lawsuit challenged the districting plan for electing the county's school board, alleging that the boundaries of the existing single-member districts diluted Hispanic voting strength in violation of Section 2.
2008	Salem County/ Borough of Penns Grove, NJ	Complaint filed		X		Defendants violated Section 2 by enforcing standards, practices, or procedures that denied Hispanic voters opportunity to participate effectively in the political process on an equal basis with other members of the electorate.
2008	Euclid City School District Board of Education, OH	Complaint filed	X			The at-large system of electing members of the city's school board diluted the voting strength of African-American citizens due to racially polarized voting.
2009	New Black Panther Party (NBPP)	Complaint filed			X	The NBPP, its president, and two members were sued under Section 11(b) for intimidating and attempting to intimidate voters and poll watchers in Philadelphia, PA.
2009	Town of Lake Park, FL	Complaint filed	X			The Town's at-large system of electing commissioners effectively violated Section 2 by diluting African-American voting strength; investigation commenced under previous administration and complaint was filed under current administration in March 2009.

As reflected in the table, from January 2001 through January 2009, Division leadership approved or prosecuted 22 matters that included claims under VRA Sections 2 or 11(b). This total included one matter that was approved by the prior administration but litigated and defended on appeal during this period, two matters that were initially approved but later determined to be moot for a

variety of reasons unrelated to the race of the victims, and one matter that was initiated during the period in question but was not filed until after the change in administrations. Of these 22 matters, 8 matters were on behalf of Black voters, 11 were on behalf of Hispanics or Asian populations, and 2 (Noxubee and the New Black Panther Party case, discussed in detail below) were on behalf of White victims or against minority defendants.[21] In light of the fact that the number of cases brought on behalf of White voters constituted a small fraction of the total number of cases brought by the Voting Section during this period, and the fact that the total number of cases brought far exceeded the number of cases brought during the current administration from 2009 to 2012, we concluded that the statistical evidence did not support the claim that Division leadership during this period was hostile to the enforcement of Sections 2 or 11(b) on behalf of Blacks or other minority populations or pursued cases on behalf of White voters at the expense of racial minorities.

B. Examination of Selected Cases Involving the Enforcement of Sections 2 and 11(b)

In addition to looking at the statistical data, we selected several specific Section 2 and 11(b) matters for a detailed examination, based on witness testimony alleging that positions taken in these cases by political appointees or career staff were driven by improper racial or political considerations, or that the reasons given by Division management for those decisions were pretexts for such improper considerations. We address these cases in three groups. First, we address a series of decisions made by Division leadership during the prior administration that were cited to us by some witnesses as reflecting the Division leadership's alleged hostility toward enforcing Sections 2 or 11(b) on behalf of minority defendants or an undue preference for enforcing these statutes on behalf of White voters and against minority defendants. These cases also have been the subject of counter-allegations by former Division leaders and some former career staff that the positions taken by some career staff reflected hostility toward "race-neutral" enforcement of these statutes. Second, we examined the New Black Panther Party case – the Section 11(b) case that bridged two administrations and that triggered accusations that improper racial and political considerations drove both the decision to bring the case and the subsequent decision to dismiss it against three of the four defendants. Third, we examine two cases considered and rejected by Division leadership in 2009, as well as related incidents, which became the focus of allegations that the current administration's leadership was hostile to "race-neutral" enforcement of Sections 2 and 11(b).

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[21] The New Black Panther Party case involved Black defendants but did not involve allegations of intimidation against known White voters. However, some of the alleged victims of intimidation in that case were White poll watchers.

We found no direct evidence in any e-mails, documents, or testimony of any improper racial or political considerations in connection with the decisions of Division management in these particular Section 2 or 11(b) matters. We next looked at these cases to determine if they were handled in such a way as to support an argument that the reasons given were pretexts for improper considerations.

1. Selected Cases during the Period from 2004 to 2006

In this section we address several controversial decisions made by Division leadership with respect to the enforcement of Sections 2 and 11(b) during the period from 2004 to 2006. Most of these decisions were made during the period that Bradley Schlozman had supervisory authority over the Voting Section in his capacity as the Division's Principal DAAG or as the Division's Acting AAG. As detailed below, we found that the decisions in these cases were generally within the enforcement discretion of Division leadership, and in at least one case was vindicated by a district court and court of appeals. We found that one of these decisions was based on an interpretation of Section 2 that was inconsistent with the interpretations of prior and subsequent Division leadership, and that in another case Division leadership failed to respond to a career staff recommendation for action in a potential Section 11(b) case. However, we found an insufficient basis to conclude that these decisions were motivated by improper racial considerations.

a. Factual Summaries

Rejected Vote-Dilution Action against "Township A" (2004): Several current or former career attorneys alleged that the Division leadership's decision not to file a Section 2 vote-dilution action against a political jurisdiction ("Township A") exemplified leadership's hostility to enforcement of voting rights laws on behalf of Black voters.

The Voting Section submitted a proposed action against Township A to Division leadership in January 2004. In March 2004, before Division leadership reached a decision on the possible action against Township A, the Voting Section proposed a similar Section 2 lawsuit on behalf of Black voters in another jurisdiction ("Township B"). At the time, DAAG Bradley Schlozman reviewed Voting Section matters, and Schlozman ultimately approved the Township B case but rejected pursuing the Township A matter.

Both cases involved majority-White jurisdictions with a substantial minority of Black residents of voting age. Both jurisdictions utilized staggered annual at-large elections for their seven-member governing bodies.[22] In each

[22] Staggered at-large elections to multi-member entities such as those in Township A and Township B (as contrasted with single-member district systems, for example) have

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election, the two or three candidates who received the most votes were elected for staggered three-year terms. In Township B, no Black candidate had ever been elected to the governing body. In Township A, only one Black candidate had been elected to the governing body in several decades. The issue in both cases was whether these at-large systems were being used to dilute the voting strength of Black citizens in violation of Section 2.

We examined contemporaneous documents and interviewed witnesses to determine whether Division leadership's decision not to file an action against Township A reflected hostility to enforcing Section 2 on behalf of minority voters. In making this assessment, we found it was important to compare the circumstances of Division leadership's approval of the Township B case. We concluded that although many of the facts in these cases were similar, there were important differences that were relevant to two of the three preconditions for a Section 2 vote-dilution case: that the minority group is politically cohesive (it tends to vote together), and that the majority group votes as a bloc, usually defeating the minority voters' preferred candidate.[23]

The Voting Section's memoranda to Division leadership (known as "J-Memos") regarding the possible Township A and Township B matters were prepared by different case teams, but both were reviewed and approved by the Section Chief before being sent to Division leadership. We found the evidence relating to cohesiveness among Black voters was markedly different in the two cases. For Township B, there was strong evidence of cohesion, at a rate far above the threshold for cohesiveness used by most experts. By contrast, the J-Memo for Township A did not explicitly address the cohesiveness issue, and the data in the memo indicated that Black voters typically split their votes among several candidates and very rarely supported any single candidate at a rate above the threshold used by most experts.

The evidence also differed between Township A and Township B with respect to the question of whether bloc voting by the majority usually operated to defeat the minority's preferred candidate. In Township B, notwithstanding the extremely strong cohesion among Black voters, Black-preferred Black candidates always lost due to bloc voting by Whites, and Black-preferred White candidates almost always lost. This led Division leadership to conclude that

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historically been the subject of scrutiny by the Voting Section under Section 2 of the VRA because they have been seen as a means for the racial majority to prevent a racial minority from electing any candidates of choice, even if the racial minority is large and tends to vote cohesively.

[23] *See Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1987). The third precondition, which was not at issue in these cases because it was clearly present, is that the minority is sufficiently large and geographically compact to form a majority in a district if there were single-member districts.

the Township B facts satisfied the requirement that bloc voting by Whites usually resulted in the defeat of Black-preferred candidates.

By contrast, Township A exhibited more complicated patterns in the voting data. The available evidence showed that a substantial minority of the candidates elected from 1996 to 2003 were candidates who received the highest percentage of Black votes. In many of these elections there were no Black candidates on the ballot. Division leadership concluded that the success rate of Black-preferred candidates precluded a finding that bloc voting by Whites usually operated to defeat Black-preferred candidates.

Division leadership declined to pursue a Section 2 action against Township A but approved the filing of a Section 2 action against Township B. However, shortly thereafter, a Black candidate was elected to the Township B governing body. In light of this result, the Voting Section withdrew its request to Division leadership to file the case and no Section 2 lawsuit was filed against Township B.

Termination of a Section 2 Investigation of "County C": In December 2004, Division leadership instructed the Voting Section that it could not initiate a limited preliminary investigation into whether the system of staggered at-large elections for the governing body of a jurisdiction ("County C") violated Section 2 by diluting the voting power of Native Americans.[24] Some current and former Voting Section career attorneys, including three Section managers, told the OIG that the Division leadership's decision in this matter was evidence of its hostility towards enforcement of Section 2 on behalf of minorities.

The rejected request for a limited preliminary investigation was made after the Voting Section conducted Internet research that suggested that none of the five members of County C's governing body were Native American, even though Native Americans comprised approximately 20 percent of the population in the county and were geographically concentrated. The Voting Section proposed to follow up on this research with limited additional

[24] Prior to April 2003, Voting Section attorneys were permitted to conduct preliminary investigations without advance approval from Division leadership. In approximately 2003, Division leadership learned that a Voting Section attorney had contacted a jurisdiction to request information in connection with one such preliminary investigation. The attorney allegedly told a local official that the jurisdiction was under investigation, which led to a complaint that reached Division leadership. In response, Division leadership initiated a policy requiring that a short Investigation Memo ("I-Memo") describing the proposed investigation be submitted to Division leadership prior to contacting local officials. The purpose of the I-Memo was to provide Division leadership with information about the proposed investigation and the information that would be sought from local officials and members of the community. In August 2009, new Division leadership eliminated the I-Memo requirement, and the Voting Section Chief is now authorized to approve investigations.

investigative steps to develop information relevant to the issue of vote dilution. Division leadership instructed the Voting Section to terminate the investigation on the ground that County C as a whole was overwhelmingly Republican and that this fact, rather than race, explained the failure of a Native American candidate running as a Democrat to be elected to an at-large seat on the governing body.

This rationale by the Division's leadership was contrary to the position that the Voting Section had argued successfully in 2002 – before Schlozman assumed his leadership position over the Voting Section – in another Section 2 case on behalf of Black voters against Charleston County, South Carolina.[25] In that case, Charleston County raised a defense similar to the Division leadership's argument in the County C matter, namely that the requirement that the minority's candidates of choice usually were defeated due to White bloc voting was not satisfied because the observed pattern of minority candidate defeats was the product of partisan voting, not racial voting. In response, the Voting Section argued, and the district court agreed, that the cause of cohesive White voting – specifically the question of whether such voting reflected party affiliation rather than racism – is not a relevant consideration when determining whether the government satisfied the precondition.

In deciding not to pursue the County C matter, Division leadership concluded that the intent of the voters (in other words whether the voters were motivated by partisanship rather than race) should be a consideration under Section 2, notwithstanding the argument accepted by the court in the Charleston County case.

A private action under Section 2 was subsequently filed on behalf of the county's Native American voters. The Department later intervened in the action for the limited purpose of defending the constitutionality of Section 2. The district court ultimately ruled that the at-large system for electing the county commission violated Section 2.

Noxubee County/Ike Brown: In February 2005, the Voting Section filed a civil action against the Noxubee County (Mississippi) Democratic Election Committee (NDEC), and its Black chairman, Ike Brown, alleging violations of Sections 2 and 11(b) of the Voting Rights Act. The Noxubee litigation was the Department's first lawsuit under Section 2 of the VRA alleging denial or abridgment of the rights of White voters to vote on account of race by Black defendants.

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[25] *United States* v. *Charleston County*, 318 F. Supp. 2d 302, 307-8 (D.S.C. 2002).

Noxubee County is in east-central Mississippi and, according to the 2000 Census, had a voting age population of 8,697, of whom 32.5 percent were White and 65.7 percent were Black. According to Voting Section documents, in June 2003, NDEC Chairman Ike Brown published in a local newspaper a list of approximately 170 White voters who he said "will be subject to challenge if they attempt to vote in the Aug. 5 Democratic Primary in Noxubee County." Brown claimed that most of these voters were in violation of the party-loyalty provision of the Mississippi Code, which he stated disqualified them from voting in the Democratic primary. The Voting Section received complaints from local residents and county officials and requests for a "federal presence" at the election. Division leadership sent a team of eight attorneys, including then-Special Litigation Counsel Christopher Coates, to monitor the August 2003 Noxubee County primary election. According to their post-election report, the attorneys did not observe any voters who were challenged on the basis of party loyalty, but they did observe absentee balloting irregularities and unsolicited voter assistance.

Following completion of an investigation, in February 2005, the Department filed a complaint alleging that Ike Brown and the NDEC discriminated against White voters and against White candidates and those who supported them, in violation of Section 2 of the Voting Rights Act, and engaged in voter intimidation, in violation of Section 11(b), by, among other things, publishing the names of White voters who would be challenged at the polls. The case against Brown proceeded to trial and, in June 2007, the district court entered judgment for the United States.

The district judge ruled that Section 2 of the Voting Rights Act protected the rights of all voters, regardless of race. *United States* v. *Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007). The court determined that "Brown and the NDEC have administered and manipulated the political process in ways specifically intended and designed to impair and impede the participation of white voters and to dilute their votes, in violation of Section 2." *Id.* at 486. Among other things, the court found that the defendants manipulated the absentee balloting process in a discriminatory manner and provided improper, unsolicited "assistance" to Black voters at the polls on Election Day. *Id.* at 455-471. The court, however, rejected the Section 11(b) claim, stating: "Although the court does conclude that there was a racial element to Brown's publication of this list, the court does not view the publication as the kind of threat or intimidation that was envisioned or covered by Section 11(b)." *Id.* at 477, n.56 (citations omitted). The court also stated that "the Government has given little attention to this claim, and states that it has found no case in which plaintiffs have prevailed under this section." *Id.* On August 27, 2007, the court entered a remedial order in which it enjoined Brown, the NDEC, and their agents from violating the Voting Rights Act. The court appointed a referee-administrator to act as superintendent of all Democratic primary and runoff elections through November 2011.

Coates told us that during the flight to Mississippi to observe the primary, then-Deputy Chief Robert Kengle said to him: "Can you believe we are going down to Mississippi to protect white voters?" When we interviewed him, Kengle denied making such a comment or making any reference to White voters, and said that all he recalled telling Coates was that "he could not believe they were doing this."[26] Kengle told us that his conversation with Coates was about Division leadership repeatedly rejecting cases on behalf of minorities and that he believed those cases were more meritorious than the Noxubee matter.

Numerous witnesses told us that there was widespread opposition to the Noxubee case among the Voting Section career staff.[27] Some career employees told us they believed that the decision to bring the Noxubee case while rejecting others involving Black voters or White defendants reflected a preference by Division leadership for enforcing Section 2 on behalf of White voters and against minority defendants. Some Voting Section personnel also told us that they objected to the Section's pursuit of the Noxubee case when they perceived that Division leadership had rejected or stalled other Section 2 cases involving Black victims. These witnesses also told the OIG that they believed that the Noxubee case, while justifiable on a legal basis, was a misallocation of resources and that the Voting Section should have been focusing on cases involving Black victims.[28]

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[26] In response to Coates's testimony about this incident to the U.S. Commission on Civil Rights, Kengle also filed an affidavit with the Commission denying that he complained to Coates about protecting White voters. http://www.usccr.gov/NBPH/USCCR_NBPP_report.pdf (accessed on March 8, 2013) at 52 n.187.

[27] The strong opposition of some career attorneys led them to engage in inappropriate harassment of another Section employee who worked on this case. These incidents are discussed in Chapter Four of this report.

[28] Coates told the U.S. Commission on Civil Rights that a Voting Section social scientist "flatly refused to participate in the investigation" of Noxubee County, and cited this incident in support of his claim that there was hostility within the Voting Section to the "race-neutral enforcement of the VRA." The social scientist told the OIG that he told Coates he did not want to participate in the investigation phase of the matter because he had other things he was working on at the time. Coates agreed with this account of the conversation, but told us that he concluded that the social scientist had other reasons because this was the first time in their 20-year history of working together that the social scientist declined to work with Coates on anything, and that during previous conversations the social scientist had told Coates that the Department should not investigate cases with White victims. However, we found that the social scientist later participated in the litigation of the Noxubee case by hiring and managing the government's expert witness during the trial, and that in 2006 Coates signed a performance assessment of the social scientist rating him as "outstanding" in all categories and describing, among many other things, his assistance in working with the Section's expert witness in the Noxubee case. Coates did not acknowledge the social scientist's work on the Noxubee case in his testimony to the Commission.

Coates and other career attorneys told the OIG that they were aware of comments by some Voting Section attorneys indicating that the Noxubee case should have never been brought because White citizens were not historical victims of discrimination or could fend for themselves. Indeed, two career Voting Section attorneys told us that, even if the Department had infinite resources, they still would not have supported the filing of the Noxubee case because it was contrary to the purpose of the Voting Rights Act, which was to ensure that minorities who had historically been the victims of discrimination could exercise the right to vote.

Coates and other career attorneys who supported the Noxubee case told us that it presented a clear violation of the voting rights laws, and that their belief that a violation had occurred was vindicated by the district court's judgment. These witnesses also indicated that the opposition to the case among many of the Voting Section's career staff reflected hostility to "race-neutral" enforcement of the voting rights laws.

Investigation of Section 2 Violations in a Majority-Black County: In 2005 and 2006, the Voting Section conducted an investigation of allegations similar to those in the Noxubee case in a county ("County D") with a majority-Black population. The County D investigation became controversial within the Voting Section for essentially the same reasons as the Noxubee case.[29]

According to Voting Section documents, County D had a historical record of racial discrimination in which Black citizens were denied the right to vote through an array of illegal voting practices. The Department had sent election monitors to observe elections in County D on numerous occasions since passage of the Voting Rights Act. A Voting Section attorney familiar with County D told us that in recent years, Black citizens had become more organized and succeeded in electing their candidates of choice to some political offices, although White politicians still held several important county offices.

In May 2005, a then-Special Litigation Counsel in the Voting Section began working on an investigation focusing on allegations that Black leaders of a local political organization in County D were engaged in activities similar to those that the Voting Section pursued in the Ike Brown case, including absentee ballot fraud and improper voter assistance. Some of these allegations were the subject of an investigation by the State Attorney General's office.

The County D investigation did not ultimately result in the filing of an enforcement action. Following the primary, the State Attorney General

[29] As discussed in Chapter Four, the Voting Section sent election monitors to County D in the Spring of 2006, and two Voting Section attorneys had heated arguments about the purpose and scope of their activities.

continued its investigation of absentee ballot fraud in County D. According to the Special Litigation Counsel, the Voting Section chose not to pursue a Voting Rights Act case in County D because of the state investigation. The state investigation resulted in several people associated with the local political group described above pleading guilty to crimes relating to illegal absentee balloting.

The Mississippi Section 11(b) Cases: The Mississippi cases were cited to us as exemplifying a failure of the prior administration to enforce Section 11(b) on behalf of minorities. In both 2005 and 2006, the Voting Section received complaints that agents from the Mississippi Attorney General's office, who were investigating allegations of absentee ballot abuse, were intimidating Black voters. The agents were allegedly questioning the voters while wearing badges and weapons, and were asking the voters to identify for the agents the candidates for whom they had voted. The stated purpose of the agents' questioning was to help them determine whether the individuals who had assisted the voters in marking their absentee ballots had done so consistently with the voters' wishes. The Voting Section, however, believed that alternative questions were available for the investigators to ask in order to learn whether the person assisting the voter with the absentee ballot had marked the ballot contrary to the voter's desire and recommended that the Section contact the Mississippi Attorney General's Office and advise them that questioning voters in this manner may violate Section 11(b).

The first matter arose in 2005, and involved allegations of intimidation in connection with a voter fraud investigation in a city in Mississippi. Acting AAG Bradley Schlozman rejected a proposal from the Voting Section to contact the Mississippi Attorney General's Office and advise them that questioning voters in this manner may violate Section 11(b). Division leadership stated in an e-mail to the Voting Section that they declined to take action in response to these allegations because the state agents were making the inquiries as part of a legitimate fraud investigation.

Allegations of similar conduct by Mississippi investigators arose again a few months later, in 2006, in connection with a state investigation of alleged voter fraud in another county. The Voting Section again recommended to Division leadership that it meet with the Mississippi Attorney General to discuss concerns about violations of Section 11(b). By this time, Schlozman had left the Division. We found that CRT Division leadership took no action with respect to the recommendation. Former AAG Wan Kim told the OIG that he could not recall the matter. We were not able to determine the reasons, if any, that no action was taken.

In March 2010, with the approval of Division leadership, Voting Section attorneys met with representatives from the Mississippi Attorney General's Office. According to a letter to the OIG from AAG Perez, the attorneys informed the state that if the 2006 conduct occurred again, the Department would

immediately open an investigation and take appropriate action. The Mississippi Attorney General's representatives assured the Department that it would take steps to ensure that its investigators understood the sensitivity of questioning voters about for whom they voted. Furthermore, they agreed to instruct the investigators to only ask such questions if it was necessary and no alternative means to gather the information existed.

Current AAG Thomas Perez told the OIG during this review, as well as the U.S. Commission on Civil Rights during testimony on May 14, 2010, that the Mississippi cases and the Pima case (discussed below) were examples of cases involving minority victims of voter discrimination that were not prosecuted during the prior administration.

Pima, Arizona: The Pima case was another example cited to us as indicative of the prior administration's failure to enforce Section 11(b) on behalf of minorities. For example, one career Voting Section attorney told us that the Pima case was a "clear example" of intimidation of Hispanic voters that was not pursued, contrasting that decision with Division leadership's decision to pursue a Section 11(b) case on behalf of White victims in the New Black Panther Party matter, discussed below.

On Election Day 2006, the Voting Section received reports that three men and one woman dressed in camouflage fatigues appeared outside a polling place in Pima County and remained there for two hours. According to the reports, one man was wearing a holstered pistol, another man was making "constitutional arguments," and the third man was videotaping their activities, while the woman stood by watching. The Voting Section did not receive reports of these individuals appearing at any other polling places that day.

In July 2007, after reports of the incident in Pima surfaced in the news media, the Voting Section obtained photographs of the individuals that had been taken on Election Day, which showed a man with a gun on his hip, but it was not evident from the photograph whether the individuals were at a polling place. The Section took steps to locate and interview eyewitnesses to determine whether anyone would testify that they were intimidated by these individuals. According to Voting Section documents, none of the witnesses claimed that they were intimidated by the individuals; instead, the witnesses indicated that they viewed them "as a joke" and ignored them. The Section also was informed in the course of the investigation that people could lawfully carry firearms in Arizona and that the individuals had stationed themselves outside of the polling place's exclusionary zone. The Voting Section did not make a recommendation to the Division's leadership that it take any action regarding the matter.

b. OIG Analysis

As noted above, the OIG received allegations from some current and former career Voting Section attorneys that during at least part of the prior administration – particularly the time that the Section was under the supervision of Bradley Schlozman – the Division's leadership was reluctant or resistant to enforce Section 2, particularly in "traditional" cases on behalf of the historical victims of discrimination. We also received related allegations from these witnesses that the Division's leadership during this period exhibited a disproportionate preference for enforcing Sections 2 and 11(b) against minority defendants or on behalf of White voters.

We found insufficient evidence to conclude that improper racial or political considerations affected Division leadership's enforcement decisions. To begin with, we found no evidence of an explicit policy decision by Division leadership or the administration to change the criteria for approving Section 2 or 11(b) cases, and our review of e-mails and other documents provided no support for a claim that there had been discriminatory enforcement.

As detailed above, cases involving White victims or minority defendants comprised a very small percentage of Voting Section work during this period. Based on the data, we found no evidence of a disproportionate preference for enforcing cases against minority defendants or on behalf of White voters. Moreover, the Division leadership's decision to pursue Ike Brown for voting rights violations in the Noxubee case was found by a federal district judge to be supported by the law and the facts, and the district judge's decision was affirmed on appeal. Likewise, the Voting Section's decision to investigate the events in County D in 2005 and 2006 involved alleged conduct that ultimately resulted in criminal guilty pleas in state court. We also took note of the fact that the Division's management, rather than rushing to bring a case against minority defendants in County D, decided to defer bringing a federal enforcement case under the Voting Rights Act because of the state investigation.

In addition, the decisions we reviewed in which Division leadership declined to pursue particular Section 2 or 11(b) enforcement actions did not establish that leadership was unreceptive to enforcement actions on behalf of minority voters, particularly in light of the data discussed above demonstrating that leadership during the prior administration approved the Voting Section's participation in a significant number of Section 2 cases on behalf of Black or other minority voters. For example, we found that Division leadership's decision not to file a vote-dilution case against Township A resulted from a finding that sufficient evidence to establish two critical elements in the Section 2 analysis was not present, and not from a generalized hostility to cases on behalf of Black voters. Importantly, we found that the parallel Township B case was approved at essentially the same time because Division leadership

believed that evidence establishing the same critical factors was present in that case.[30]

In the Pima case, we found that the Voting Section investigated the alleged intimidation and did not pursue the case after determining that none of the witnesses claimed that they were intimidated and that the alleged conduct occurred outside the polling place's exclusionary zone. We did not find evidence to suggest that there was a discriminatory motive behind the Voting Section's decision. We further found that Division leadership was not asked to render a decision regarding a possible enforcement action.

We found that the stated reason for the Division's leadership's termination of a Voting Section investigation in the County C case was inconsistent with arguments that the Division had made in 2002 in a similar Section 2 matter. Moreover, a district court ultimately found that the County C election system violated Section 2. We found that the Division leadership's termination of the County C investigation was the product of a narrow legal interpretation of the voting rights laws by Schlozman – a legal interpretation that was not followed by the Division in litigation decisions made before or after that time. We did not find evidence to conclude, however, that the reason stated for this single decision to terminate a preliminary investigation was a pretext evidencing generalized hostility to enforcing Section 2 on behalf of minority voters.

We also examined the responses of Division leadership to the Voting Section's recommendations in the Mississippi cases that the Department convey its concerns to the State Attorney General about possible violations of Section 11(b). Both cases involved allegations of conduct by state investigators toward Black voters that the Voting Section believed could be intimidating. In the first matter, Division leadership rejected this recommendation because the state investigator's questioning took place as part of a "legitimate fraud investigation." The existence of a legitimate fraud investigation does not necessarily compel the conclusion that Section 11(b) was not violated, particularly in light of the Voting Section's belief that less intimidating and intrusive questions were available that could have yielded the information needed by the state. However, we found insufficient evidence to conclude that Division leadership's position was motivated by hostility to enforcing Section

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[30] We believe that an important factor contributing to the allegations we received concerning the Township A decision was the subjective nature of the *Gingles* factor analysis under the relevant case law. For example, both Division leadership and critics of the Township A decision could use the same evidence to argue for opposite conclusions as to the significance of the percentages with which Black-preferred candidates won to support their position as to the presence or absence of bloc voting, and we are not aware of any case law precluding either's position.

11(b) on behalf of Black voters. In the second matter, we were unable, six years after the fact, to determine the reasons that the Division leadership at the time did not respond to the Voting Section's recommendation that the Division take action in the matter.

Most of the allegations we received concerning decisions by the Division's leadership during this period involving Section 2 and 11(b) matters were made by current or former Voting Section career staff who opposed the use of any Voting Section resources to pursue cases like Noxubee, County D, and the New Black Panther Party. Many of those individuals told the OIG that they believed that the reason the voting-rights laws were enacted was to protect historic victims of discrimination and therefore the Section should prioritize its resources accordingly. Additionally, some of these individuals, including one current manager, admitted to us that, while they believed that the text of the Voting Rights Act is race-neutral and applied to all races, they did not believe the Voting Section should pursue cases on behalf of White victims. Indeed, our review of Voting Section e-mails revealed widespread and vehement opposition among career employees to the prosecution of the Noxubee matter precisely because the defendants were Black. Some career employees also asserted that allegations of absentee ballot fraud of the type pursued in the Noxubee and County D matters could and should be pursued by criminal authorities (both state and federal) and criminal penalties are a more effective remedy than the type of injunctive relief generally available under the VRA.

Despite these concerns and allegations, we did not find evidence to conclude that the decisions made by Division leadership during the period from 2001 to 2009, including the period during which Bradley Schlozman was supervising the activities of the Voting Section, reflected improper discriminatory enforcement under Sections 2 and 11(b). We concluded that the decisions on whether to pursue these cases were within the enforcement discretion of the Division's leadership. In sum, we found that the position the political leadership in the Division took – that these laws could and should be used in these matters to protect White voters from discrimination or harassment in voting – was within its exercise of discretion and, in at least one case, was supported by decisions in both the district and appellate court.

2. The New Black Panther Party Case[31]

In this section we examine the New Black Panther Party (NBPP) case, a Section 11(b) action filed in January 2009, days before the inauguration of the new administration. In May 2009, the new Division leadership (then comprising career Division employees serving in an acting capacity) ordered that three of the original four defendants be dismissed from the case, despite the fact that the three defendants had defaulted, and that the proposed injunction against the fourth be significantly narrowed. This case became the focus of allegations that improper racial or political considerations had affected decisions at both the outset and the conclusion of the case.

a. Factual Summary

(1) Events Leading to the NBPP Complaint

On November 4, 2008 (Election Day), an incident occurred at a polling site on Fairmount Street in Philadelphia, Pennsylvania. Two African American individuals, later identified as King Samir Shabazz (KS Shabazz) and Jerry Jackson, both members of the NBPP, stood outside the entrance to the polling station.[32] They were wearing matching black clothing, trousers tucked into

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[31] As noted in Chapter One, the OIG referred to the Department's Office of Professional Responsibility (OPR) allegations of misconduct that we received from Congress relating to Department attorneys' exercise of their authority in the handling of this matter. Thereafter, OPR conducted an investigation of the New Black Panther Party case and issued a report dated March 17, 2011, which found that the attorneys did not commit professional misconduct or exercise poor judgment, but rather acted appropriately in the exercise of their supervisory duties; and that the decision to dismiss three of the four defendants and to seek more narrowly-tailored injunctive relief against the fourth was based on a good faith assessment of the law and facts of the case and had a reasonable basis. Although the OIG's review addressed many of the same facts examined by OPR, the nature of our review was different. As described in Chapter One, we considered the NBPP matter in response to several requests from members of Congress, as part of a broader policy review of the Department's enforcement of the voting laws over time, and whether the Voting Section has enforced those laws in a non-discriminatory manner. The NBPP represents a single (albeit highly publicized) data point in this review.

Many of the facts underlying the NBPP case, including pre-decisional documents and internal deliberations, have previously been made public in connection with the OPR report and the U.S. Commission on Civil Rights Report described in Chapter One. As a result, we are able to discuss the deliberations relating to this matter with much greater specificity than most of the other cases analyzed in this report.

[32] The NBPP is a Black separatist group active in several cities, including Philadelphia, Pennsylvania. Southern Poverty Law Center, *Intelligence Report: Snarling at the White Man* (2000). The NBPP is not affiliated with the original Black Panther Party. *Id.* Over the years, NBPP leaders have been quoted using violent anti-White and anti-Semitic rhetoric on numerous occasions. *Id.*; *see also, e.g.*, Dana DiFilippo, *New Panthers' War on Whites*, Phila. Daily News, Oct 29, 2008, at 4; http://www.adl.org/main_Extremism/new_black_panther_party.htm (accessed on March 8, Cont'd

their boots, and berets adorned with NBPP insignia. KS Shabazz carried a nightstick with a lanyard wrapped around his wrist. A Republican poll watcher recorded KS Shabazz and Jackson on a cell-phone video camera, and the recording appeared on television news broadcasts the same day and on YouTube.[33] The 81-second video shows KS Shabazz and Jackson standing in front of the polling place entrance, a few feet apart, facing toward the street in a position resembling guards or sentries. Other people can also be seen standing outside of the polling place, although no interaction between them and the cameraman or the Black Panthers is shown. On the video, KS Shabazz identifies himself as "security." When KS Shabazz asks why he is being photographed, the cameraman states: "It might be a little bit intimidating that you have a stick in your hand."

In response to a complaint from a Republican poll watcher, two Philadelphia policemen arrived at the polling station and interviewed KS Shabazz and Jackson.[34] According to a police report, officers allowed Jackson to stay at the polling station because he was a credentialed poll watcher, but instructed KS Shabazz to leave. There is no evidence that KS Shabazz returned to the polling site that day, and no evidence of any subsequent complaints about Jackson's conduct.

At some point (the exact date of posting became a matter of significant dispute, as we discuss below), the national NBPP posted an announcement (the "disclaimer") which was dated November 4, 2008, about the Philadelphia incident on its website, stating that the NBPP "does not now nor ever has, engaged in any form of voter intimidation," and that:

> Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party's leadership or its membership.

2013). As recently as August 13, 2012, in an NBPP radio broadcast, the group's National Field Marshal from Philadelphia King Samir Shabazz (a defendant in the NBPP case, as detailed below) reportedly advocated bombing white churches and killing white babies. http://blog.adl.org/extremism/king-samir-shabazz-bomb-white-churches-and-kill-white-babies (accessed on March 8, 2013).

[33] http://www.youtube.com/watch?v=neGbKHyGuHU&feature=related (accessed on March 8, 2013).

[34] http://www.eusccr.com/nov4footage.htm (accessed on March 8, 2013).

On November 7, 2008, the Chairman of the NBPP, Malik Zulu Shabazz (MZ Shabazz), was interviewed on Fox News. MZ Shabazz stated that there had been more than 300 members of the NBPP deployed in several cities on Election Day to ensure that voting went smoothly. MZ Shabazz stated: "After my investigation into that case [referring to the Philadelphia incident] I have found those [NBPP] members were responding to members of the Aryan Nation and Nazi party who were voting Republican and who were at those polling stations intimidating black voters." He also said: "Obviously we don't condone bringing billy clubs to polling sites, but when we found out that this was an emergency response to some other skinhead and white supremacist activity at that polling site then there was some explanation for that. . . . That's not that we normally do, but it was an emergency response." The Voting Section's trial team would later describe the comments of MZ Shabazz in the Fox News interview as a specific endorsement of KS Shabazz's use and display of the nightstick.

Reports of the incident in Philadelphia were communicated to the Department and relayed to the Voting Section on Election Day. Voting Section Chief Coates and Deputy Chief Robert Popper assigned a trial attorney and a law clerk to investigate the NBPP matter, which was authorized by the Division's leadership. Popper told us that around the time he began working on the NBPP matter, two attorneys in the Voting Section approached him about it. One suggested it would be "insane" for Popper to work on the matter because he would be "despised" like the lawyers who worked on the Noxubee case.[35] Another lawyer told him that politically it was a bad move for him to work on this case.

Over the next few weeks, the Voting Section case team interviewed numerous witnesses, including 11 individuals who worked for or were employed by the Republican Party as poll watchers, many of whom had been summoned to the scene of the incident on Election Day; one of the Philadelphia police officers who responded to the scene on Election Day; an FBI special agent who was familiar with the activities of the NBPP in Philadelphia; and the NBPP Chairman MZ Shabazz. None of the case-related documents reviewed by the OIG provided any indication that the case team had interviewed voters or individuals working for the Democratic Party, such as Democratic poll-watchers. They did not locate any voters who stated they had been intimidated by the Black Panthers.

On December 22, 2008, Voting Section Chief Coates sent a J-Memo to Acting AAG Grace Chung Becker recommending that the Division file a complaint under Section 11(b) against the NBPP, its Chairman MZ Shabazz,

[35] We outline in Chapter Four the harassment that was faced by a Voting Section employee who worked on the Noxubee case.

and NBPP members KS Shabazz and Jerry Jackson. The J-Memo described some of the videos recorded at the scene in Philadelphia and summarized the evidence provided by the witnesses interviewed by the case team.[36]

According to the J-Memo, KS Shabazz tapped the nightstick in his hand and pointed it at individuals. It also stated that one Republican poll-watcher "heard the Black Panthers call him and his poll watching colleagues 'white supremacists' and that KS Shabazz said 'f*** you cracker.'" The J-Memo stated that one Republican poll watcher, Christopher Hill, reported that, when he sought to enter the location, KS Shabazz and Jackson "stood side by side to create a larger obstacle to Hill's entry into the polls," but that Hill nevertheless successfully entered the building. The J-Memo also related the impressions of several Republican poll watchers that voters appeared "apprehensive" in response to the Panthers. It did not state that any voters were prevented or dissuaded from voting.

Among other things, the J-Memo described various witness accounts of the effect the two Panthers had on Larry and Angela Counts, husband and wife poll-watchers employed by the Republican Party. It stated that one witness described Larry Counts as "scared and worried about his safety" and that he "huddled away" from the Panthers and kept looking over his shoulder at them. It stated that "Larry and Angela Counts confirmed that they were afraid to leave the polling place until the Black Panthers had departed," and that Angela Counts said "she wondered if someone might 'bomb the place.'" According to the J-Memo, one poll watcher "noted that he received a report that the Black Panthers had confronted [Larry] Counts and called him a 'race traitor.'" The J-Memo, however, did not include certain information that the case team learned during an interview of Larry and Angela Counts on December 20, 2008, as reflected in an e-mail that the trial attorney sent the same day. The e-mail stated that Counts told the team that he had no interaction with the Panthers, and that he did not confirm that they called him a "race traitor."[37] The e-mail also stated that Larry and Angela Counts gave "equivoc[al]" accounts of whether the Black Panthers frightened them. It stated that Larry Counts "emphasiz[ed] that the black panthers did not scare him," but that Larry and Angela Counts said "they were afraid to leave the building until the panthers were gone."[38]

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[36] A copy of the J-Memo has been made available by the U.S. Commission on Civil Rights at http://www.usccr.gov/NBPH/NBPH.htm.

[37] The e-mail gave plausible reasons as to why the interviewer doubted that Mr. Counts was being candid, but neither the statements nor the interviewer's assessment of them were mentioned in the J-Memo.

[38] In January 2010, Larry and Angela Counts gave sworn testimony to the U.S. Commission on Civil Rights in which they stated that they were aware that the police and

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The J-Memo described statements made by NBPP Chairman MZ Shabazz in the Fox News interview and in a telephone interview by the Voting Section.[39] It stated that MZ Shabazz said that there were more than 300 Panthers deployed to various cities to ensure that the voting process went fairly and smoothly, and that MZ Shabazz "specifically endorsed the use and display of the weapon at 1221 Fairmount Street by Samir Shabazz."

The J-Memo recommended against what it referred to as the Voting Section's "usual practice" of sending a notice letter and a proposed consent decree to the four defendants in advance of filing the lawsuit. We understand that the Voting Section normally followed this procedure in an attempt to make it possible to resolve a violation before the Section formally commenced litigation. In this case, the J-Memo stated: "The nature of the NBPP is such that the letter and consent decree may not be received seriously or addressed in good faith by the defendants, who may instead seek to gain favorable publicity by publishing these documents and/or characterizing their contents in a tendentious manner."

On or about January 5, 2009, Acting AAG Becker approved the filing of the civil complaint without sending a notice letter to the four defendants, and the complaint was filed by the Division in the U.S. District Court for the Eastern District of Pennsylvania on January 7, 2009. Becker told us that this was the only Voting Section case she could remember in which she had approved filing the complaint without sending a notice letter and proposed consent decree in advance of filing. She also told us that, if she had followed the usual practice, the complaint would not have been filed before January 20, 2009, when the new administration took office. However, Becker said this was not a factor in her decision. Instead, she said she approved the recommendation to file the complaint without sending out a notice letter in advance because she believed that, in light of the violent and threatening nature of the conduct at issue, the defendants would not settle.

The complaint alleged violations of Section 11(b) of the VRA by defendants KS Shabazz, Jerry Jackson, MZ Shabazz, and the NBPP. It alleged that KS Shabazz and Jackson were deployed at the Philadelphia polling place in military-style uniforms associated with the NBPP, that KS Shabazz brandished a deadly weapon (the nightstick) 8 to 15 feet from the entrance to the polling place, including tapping the nightstick menacingly and pointing it at individuals, and that Jackson accompanied KS Shabazz and stood in

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television cameras came to the polling site, but that they did not see the Black Panthers or what was happening outside. Larry Counts testified that he had "no reason to be afraid."

[39] No notes or memoranda documenting what NBPP Chairman MZ Shabazz said to the trial team during its telephone interviews were contained in the case records provided to the OIG.

apparent formation with him during this deployment. It also alleged that KS Shabazz and Jackson made racial threats and racial insults at Black and White individuals at the polling place, and that they made menacing and intimidating gestures, statements, and movements at individuals who were present to aid voters. The complaint further alleged that MZ Shabazz and the NBPP "managed, directed and endorsed" the behavior of KS Shabazz and Jackson. The complaint alleged that the defendants thereby violated Section 11(b) in four respects: by intimidating voters, by attempting to intimidate voters, by intimidating persons who were present to assist voters, and by attempting to intimidate persons who were present to assist voters.

(2) Transition Period

Acting AAG Becker left the Division on January 19, 2009. The Obama administration took office on January 20, 2009, which was prior to the date by which the four defendants were required to file their answers to the Department's civil complaint. Following the change in administrations, career DAAG Loretta King served as Acting AAG for the Civil Rights Division through mid-October 2009, and career Housing Section Chief Steven Rosenbaum served as Acting DAAG for the Division through mid-July 2009. Although the NBPP case was listed among the Voting Section's active cases in briefing materials that were provided to King and Rosenbaum in the first few months of the new administration, there is no evidence that this case was the subject of substantive communications between Division leadership and the Voting Section until late April 2009. Prior to that time, the Voting Section case team continued to develop evidence relating to the case.

(3) Witness Declarations and the Defendants' Failure to Answer the Complaint

On March 31 and April 1, 2009, the NBPP trial team obtained signed declarations from four poll watchers who had observed KS Shabazz and Jackson at the Philadelphia polling station on Election Day: Bartle Bull, Christopher Hill, Michael Mauro, and Wayne Byman.[40] The four declarations included essentially identical language to describe KS Shabazz and Jackson, in particular the "black uniforms" and insignia they wore, their location at the entrance, and the fact that the shorter man (KS Shabazz) had a billy-club or nightstick. Three of the declarations (Bull, Hill, and Mauro) stated that the shorter man pointed the nightstick at individuals and slapped or tapped it in his hand. Three of the declarations (Bull, Hill, and Byman) expressed the opinion that the two uniformed men created a "menacing" or "intimidating" presence at the entrance to the poll.

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[40] Complete copies of the four declarations have been made available by the Commission on Civil Rights at http://www.usccr.gov/NBPH/NBPH.htm.

In addition to these common elements, the declarations provided various individualized details. The Bull declaration stated that Bull had extensive experience in politics and voting procedures, including working to help enforce the voting rights of Mississippians in the mid-1960s. Bull stated that KS Shabazz and Jackson confronted and attempted to intimidate voters and attempted to intimidate and interfere with the work of other poll observers whom they "apparently believed did not share their preferences politically." He said he heard the shorter man (KS Shabazz) make a statement directed toward White poll observers that "you are about to be ruled by the black man, cracker." He further described the conduct as "the most blatant form of voter intimidation that I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960's."

The Hill declaration became significant because of its statement that KS Shabazz and Jackson worked in unison to attempt to impair Hill's access to the polling place. It stated, in relevant part:

> When I attempted to exercise my rights as a credentialed poll watcher, and enter the polling place, the two men formed ranks and attempted to impair my entrance into the polling place. They formed ranks by standing in such a way to make them a significant obstacle to my entrance. I also then observed that the nightstick contained a lanyard which was wrapped tightly around the shorter man's wrist. I am an Army veteran. I knew that use of the lanyard would make the nightstick a more effective weapon because it could be swung more aggressively without fear of dropping the weapon, and by leveraging the firmer grip into a more severe blow on any victim. I was forced to avoid their formation in order to enter the polling location. I did not make physical contact with either of them, but it was without question that they sought to intimidate me from entering the polling place and exercising rights I had as a credentialed poll watcher.[41]

The Hill declaration also stated that KS Shabazz made racially charged statements, including terms such as "cracker" and miscellaneous profanity.

The Byman and Mauro statements contained somewhat less detail about the conduct of KS Shabazz and Jackson. The Mauro declaration described the discussion between the men and the Philadelphia police officers, and stated:

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[41] On Election Day, a television reporter interviewed Hill, who stated among other things that when he approached the two men, they "closed ranks next to each other. You know, I'm an Army veteran, that doesn't scare me. So I walked directly in between them, went inside, ..." http://www.youtube.com/watch?v=kOtGllNk2Gk&feature=related (deleted subsequent to viewing by OIG).

"As the shorter man departed, he belligerently yelled a statement at me and other white poll watchers which contained racial terms."

None of the four defendants in the NBPP case answered the complaint in the time period required by the Federal Rules of Civil Procedure. On April 1, 2009, the Division, with the knowledge of Acting DAAG Rosenbaum, filed a motion with the court for an entry of default as to all four defendants for failing to timely file an answer to the Department's complaint. The next day, the clerk of the court entered a default as to all four defendants. On April 17, the federal district court, *sua sponte,* ordered the Department to file its motion for a default judgment by May 1, 2009. According to an e-mail from a Voting Section trial attorney who was working on the case team, the court's deputy clerk informed the trial attorney that Judge Dalzell would "almost certainly" hold a hearing on the merits of granting a default judgment against each of the defendants.

(4) April 15 Meeting Regarding Coates

As detailed in Chapter Four, on April 15, 2009, King and Deputy Associate Attorney General Samuel Hirsch (a political appointee in the new administration) met with Attorney General Holder concerning the potential removal of Voting Section Chief Christopher Coates. Because the motion for default judgment in the NBPP case had not yet been presented to anyone in the new Division leadership for review, it is unlikely that the NBPP case was discussed at this meeting. However, for reasons discussed below, we believe that the meeting affected later decisions made in the case.

Attorney General Holder told us that he understood from what others told him that Coates was a divisive and controversial person in the Voting Section and that one concern about Coates was that he "wanted to expand the use of the power of the Civil Rights Division in such a way that it would take us into areas that, though justified, would come at a cost of that which the Department traditionally had done, at the cost of people [that the] Civil Rights Division had traditionally protected," specifically "reverse-discrimination" cases. He also stated that he had been told that Coates "was not a person who [] believed in the traditional way in which things had been done in the Civil Rights Division" under Republican and Democratic administrations, and that Coates's view on civil rights enforcement was "inconsistent with long-time Justice Department interpretations and policies." As further discussed in Chapter Four, following their meeting with the Attorney General, King and Hirsch consulted with personnel in the Department's Justice Management Division as part of an unsuccessful effort (at that time) to remove or reassign Coates as Section Chief.

(5) The Draft Motion for Default Judgment

On April 28, Coates forwarded a draft motion for default judgment to Rosenbaum for review. The draft memorandum summarized the evidence as follows:

> On election day, November 4, 2008, Defendants King Samir Shabazz and Jerry Jackson stood, side by side, at the entrance to an open polling place, in the military-style uniforms of the Defendant New Black Panther Party for Self-Defense, brandishing a weapon, and making racial and other hostile comments. This conduct was widely witnessed and documented by means of video recorders. Defendants New Black Panther Party for Self-Defense and Malik Zulu Shabazz made statements that a nationwide effort was underway to post party members in a similar fashion at polling locations throughout the country.

The draft motion stated that the United States would present evidence at a default hearing that NBPP Chairman MZ Shabazz "announced, on national television, a nationwide effort to deploy '300 party members' at polling locations throughout the country." The draft also stated the United States would present evidence of statements of MZ Shabazz and KS Shabazz on Election Day and at other times, "establishing their racial animus and intent." The draft contained a general description of evidence that would be presented at the hearing regarding the conduct of KS Shabazz and Jackson at the polling location, which was consistent with the content of the Bull, Hill, Byman and Mauro declarations set forth above, including the statement that KS Shabazz and Jackson "attempted to block physical access to the polls to one individual authorized to aid voters." However, the draft did not identify these witnesses or attach their declarations.[42] The draft stated that NBPP Chairman MZ Shabazz "first endorsed and defended the behavior (though later he appeared to disclaim it)."

The draft injunction that the trial team proposed for presentation to the court provided:

> Defendants, their agents and successors in office, and all persons acting in concert with them, are permanently enjoined and restrained from deploying at the entrance to polling locations in the United States either with weapons or in the uniform of the Defendant New Black Panther Party for Self-Defense, or both, and

[42] Popper stated that the reason the draft did not provide the declarations was that the trial team expected the court to schedule a hearing on the default judgment, and the trial team would call the witnesses then.

> from otherwise engaging in coercing, threatening, or intimidating behavior at polling locations during elections.

It also enjoined the defendants from appearing within 200 feet of a polling location in the NBPP uniform, or appearing within 200 feet or within sight of a polling place with a weapon. It enjoined defendants from "organizing and deploying or posting armed individuals to polling locations," and from "making statements or taking actions which intimidate, threaten or coerce voters, or those aiding voters."

(6) Events of April 29-May 1

On April 29, Rosenbaum sent Coates an e-mail stating: "I have serious doubts about the merits of the motion for entry of a default judgment and the request for injunctive relief. Most significantly, this case raises serious First Amendment issues, but the papers you've submitted make no mention of the First Amendment." The e-mail asked Coates to identify the evidence that MZ Shabazz or the NBPP managed or directed the behavior or actions of the other defendants. Rosenbaum also asked: "Did any of the defendants make any statements threatening physical harm to voters or persons aiding voters? On this issue, there is a body of case law on what constitutes 'true threats.'" The e-mail also questioned the proposed injunction, including its nationwide scope and its prohibition on wearing the NBPP uniform. Rosenbaum forwarded this e-mail to Acting AAG King, stating he had "serious doubts about the case and the papers that were submitted for review."

Later that same day, Coates responded to Rosenbaum's e-mail, explaining why the First Amendment was not a concern with respect to using evidence of the statements of the defendants for the purpose of establishing liability. The e-mail also stated:

> We have no direct statements by the defendants threatening or promising physical harm. (1) We do not think we need it, given the nightstick, the brandishing of it, the confrontational language used, and the physical blocking of Hill. The context suggests the threat of violence in a most basic way. Any of us might hesitate to walk into that polling station. We believe the court will look at this behavior from the objective point of view of a reasonable voter coming to vote. (2) We also have an "attempt" claim, which should obviate the need for any direct showing of successful intimidation.
>
> For both of these reasons we do not believe we need "true threats." Indeed, the Department has never taken the position that Section 11(b) requires a "true threat." As recently as the early 90s, we brought US v. NC Republican Party to enjoin a prospective voter challenge program under Section 11(b). There was no threat of violence in that case. It was ultimately settled with a consent

decree. Given that the statute enjoins not just threats, but intimidation and coercion, this makes sense.

Coates's e-mail also raised the issue of statements on the NBPP's website, but did not reference the disclaimer described above that had been posted (at some point) on the NBPP website. Coates stated that the evidence that MZ Shabazz managed and directed the incident "consists of statements on the NBPP's website before the election as to what the NBPP planned to do, and the on-air statements by [MZ Shabazz] after the election as to what the NBPP had done."

The e-mail also addressed the nationwide scope of the injunction, stating that it was justified by the "announced intent [of the NBPP] to have a nationwide program." The e-mail further stated that an injunction against the wearing of the NBPP uniform "makes sense because of the implicit threat the uniform implies," noting that many jurisdictions bar the wearing of partisan attire near a polling place. It stated that the 200-foot distance feature was "necessarily somewhat arbitrary," and that "[a]nother number might work."

On April 30, in response to further inquiries from Rosenbaum about the "manage and direct" allegation and the scope of the proposed injunctions, the NBPP team sent Rosenbaum three witness declarations and a discussion of case law relating to injunctive relief.

Also on April 30, at a weekly meeting with Associate Attorney General Thomas Perrelli and Deputy Associate Attorney General Samuel Hirsch, Rosenbaum described the NBPP matter and the upcoming deadline, and stated that he had concerns about liability and relief. According to Hirsch, Rosenbaum or King stated that the case was "so extraordinarily weak that it never should have been filed in the first place."[43] The participants in this meeting agreed that the government should seek an extension of the deadline for the motion for default judgment the next day if Division leadership and the Voting Section did not reach a consensus about the case. Perrelli told Rosenbaum to keep Hirsch informed about the case going forward.

Later that afternoon, Rosenbaum met with Coates and Popper to discuss various concerns that Rosenbaum had about the case. King joined the meeting and, after further discussion, told Coates and Popper to submit revised motion papers to her and Rosenbaum addressing the scope of the injunction and the

[43] Rosenbaum told us he does not believe he made the quoted statement during the April 30 meeting, but that he said something to the effect that the evidence he had seen to date was "extraordinarily weak." It is not clear that King attended this meeting, so we believe that Hirsch was recalling a statement made by Rosenbaum. Both King and Rosenbaum told OPR investigators that they eventually held and expressed the opinion that the case should not have been filed in the first place.

First Amendment, and to seek an extension from the court. According to Coates, during this meeting King stated that the NBPP complaint raised Rule 11 issues and should not have been brought against any of the defendants. King told us that she said that the case was an action that she probably would not have brought, although she did not specify whether she made this statement at the April 30 meeting.

After the meeting ended, Rosenbaum forwarded the trial team's draft motion papers to Hirsch, along with his prior e-mail exchanges with Coates. Rosenbaum described the meeting to Hirsch in a separate e-mail. He stated, "I've seen videos of the activity at the polling place and continue to have the reservations I discussed this morning. (According to the videos, the defendant with the nightstick was at the polling place for only an hour and then left when the police asked him to leave. The other defendant was a resident of the apartment building that served as the polling place.)" Hirsch called Rosenbaum to discuss Rosenbaum's concerns about the case further, and then e-mailed him thanks for "doing everything you're doing to make sure that this case is properly resolved."

On the morning of May 1, Coates forwarded revised motion papers to King and urged that the motion be filed that day to avoid the risk of dismissal. While reviewing the revised papers, King looked at the NBPP website and discovered the NBPP's disclaimer statement quoted above, dated November 4, 2008, disavowing the actions of KS Shabazz and Jackson in Philadelphia. She also discovered a statement suspending the Philadelphia Chapter as of January 7, 2009 (the day the complaint was filed). King consulted with Rosenbaum and then Hirsch, and the three agreed that the Division should seek an extension of time from the court to file its papers.

King and Rosenbaum then summoned Coates and Popper to a meeting, at which Rosenbaum accused Coates and Popper of intentionally withholding information about the NBPP website and the disclaimer from Division leadership. Popper and Coates vigorously denied this allegation, and Coates raised his voice and used profanity.[44] Popper and Coates argued that the website statements carried no weight because they were not credible, were made in anticipation of litigation, and were probably backdated, and because

[44] In a later e-mail to King and Rosenbaum, Coates and Popper stated that the draft memorandum of law that was provided to King and Rosenbaum on April 29 contained the following language, which they said refuted any claim that they had intentionally withheld information about the NBPP website content: "After accounts and video of this behavior were broadcast nationwide on Election Day, the [NBPP] and Chairman [MZ] Shabazz first endorsed and defended the behavior (though he later appeared to disclaim it)." The e-mail concluded with a request by Coates for an apology from King and Rosenbaum for accusing Coates and Popper of intentionally misleading management. Neither Rosenbaum nor King responded to the e-mail.

there was other evidence that KS Shabazz continued to be affiliated with the NBPP.

King instructed Coates and Popper to request a 2-week extension from the court and to prepare a supplemental memorandum for Division leadership regarding the appropriate remedy. The court extended the deadline for the motion for default judgment to May 15, 2009.

(7) May 5 Meeting with Attorney General Holder

On May 5, 2009, Acting AAG King and Deputy Associate Attorney General Hirsch met with Attorney General Eric Holder and some of his senior advisors to discuss personnel matters in the CRT, including whether to remove Coates as Section Chief. As detailed in Chapter Four, King told the Attorney General that the Justice Management Division had stated that they would not support a performance-based removal of Coates at that time without further documentation and discussion. Witnesses told the OIG that they recalled the Attorney General urging King to do what was proper with respect to Coates and to let the chips fall where they may.

According to several witness accounts and a confirming document, during this meeting King and Hirsch also briefed the Attorney General on the NBPP matter, and there was a discussion of the possible dismissal of some of the defendants. Attorney General Holder told the OPR that at the time of the meeting he thought King was reporting an action that they had taken or were about to take, that King was not seeking his approval for the decision, and that King was simply notifying him of it because it could attract media attention and possibly create controversy in the Division. The Attorney General also told investigators that he believed King's decision to dismiss some defendants was correct and that he tried to convey that in the meeting. Several witnesses confirmed that the Attorney General conveyed his approval and that he also acknowledged that a decision to dismiss some of the defendants would be criticized by some people who would say that the Attorney General was helping the NBPP, which had supported President Obama in the election.

Attorney General Holder told OPR investigators he did not talk to anyone at the White House about the NBPP case, and that he had no basis to believe that the decision to dismiss three of the defendants in the case was based on partisan or racial considerations. Our review of the Attorney General's e-mails during this time period did not reveal any communications with the White House about the NBPP case.

(8) Further Development of the Disclaimer Controversy

Following the contentious meeting on May 1, the NBPP case team worked on preparing the supplemental memorandum requested by Division leadership.

During this period the team attempted to determine the timing of the posting of the disclaimer language on the NBPP website, which was dated November 4, 2008. On May 5, a law clerk on the case team sent an e-mail to Popper and Coates (and another case team member) stating that he was "reasonably sure" the disclaimer language regarding events in Philadelphia was posted on the NBPP website after the complaint was filed in January 2009. However, on May 6, the case team received a chronology from the Anti-Defamation League (ADL) stating that the disclaimer language had, in fact, been released by the NBPP late in the day on Election Day (November 4).

Coates sent a supplemental memorandum prepared by the case team to Rosenbaum and King on the evening of May 6, after the case team had received the information from the ADL. The supplemental memorandum did not reference the information from the ADL, and it stated unequivocally that the disclaimer language had been added to the NBPP website "after this lawsuit was filed on January 7, 2009." The supplemental memorandum also addressed several issues that had been raised in prior discussions with the front office, including an explanation of why the disclaimer and suspension language on NBPP's website did not preclude injunctive relief, and a discussion of First Amendment issues. Rosenbaum forwarded the supplemental memorandum to Hirsch.

On May 7, Rosenbaum sent an e-mail to Coates and Popper asking how the team knew when the disclaimer language had been posted on the NBPP website. Popper responded that a law clerk had pulled language from the NBPP website in November or December that did not contain the disclaimer language, that the case team had periodically monitored the website since mid-November, and that the disclaimer language was not added until after the complaint was filed. The law clerk told us that although he does not now recall whether he saw the disclaimer on the website in November 2008, based on his review of e-mails from January 2009 between himself and the trial attorney on the case team, he believes that the disclaimer had not been posted at that time.

Following a discussion with the ADL on May 8, Popper reported to the case team that the ADL "firmly recollect[s] that the statement was added after 11/04/08 but well before this lawsuit was commenced. They have convinced us that they are probably right. We believe now that we cannot in good faith represent to the court that the [statement] was added to the website after this lawsuit commenced" (emphasis in original). After further inquiries from Rosenbaum about the timing of the disclaimer, on May 11 Coates e-mailed Rosenbaum, reporting the information from the ADL and stating "we don't have enough information to know for sure" when the disclaimer was added to the NBPP website. Rosenbaum forwarded this new information to King and Hirsch, stating to King that "[t]his exchange renews my serious concerns about the Voting Section's handling of this case and the representations it makes to the front office about the case."

(9) Review by the Appellate Section

On May 7, Rosenbaum forwarded various materials from the NBPP trial team, including the supplemental remedial memorandum (which included the incorrect information about the posting date of the disclaimer) and revised proposed order, to Diana Flynn, Chief of the Civil Rights Division Appellate Section, and requested the Appellate Section's views on the proposed order. Flynn assigned the matter to an attorney in the Appellate Section. On May 11, Rosenbaum forwarded to Flynn a copy of Coates's e-mail of the same day, described above, in which Coates reported the information from the ADL and stated "we don't have enough information to know for sure" when the disclaimer was added to the NBPP website. On May 12, the appellate attorney provided her views in a long e-mail to Flynn. Among other things, the attorney questioned whether the government had a sufficient factual basis for alleging violations by NBPP Chairman MZ Shabazz and the NBPP, or for requesting an injunction against the two of them. The attorney stated that the Voting Section's arguments appeared to be sufficient to support some kind of injunctive relief against KS Shabazz and Jackson, but that she had concerns that the specific wording of the case team's proposed injunction might raise First Amendment concerns.

On May 13, Flynn forwarded the appellate attorney's views to Rosenbaum and Coates. Flynn's e-mail stated that the attorney's comments "reflect my views." However, Flynn's e-mail differed with the attorney's comments with respect to the claims against the NBPP and its chairman, MZ Shabazz, in that she stated: "We can make a reasonable argument in favor of default relief against all defendants," and that "we generally concur in Voting's recommendation to go forward." Although she stated that the case against MZ Shabazz and the NBPP was "a bit of a reach," she also stated that, given that the complaint had already been filed, "[w]e probably should not back away from these allegations just because defendants have not appeared." Flynn also wrote: "Voting does seem to have evidence in support of these allegations." Flynn's e-mail does not identify the evidence to which she was referring. Both the appellate attorney and Flynn stated that the court might require further evidentiary proceedings before granting the requested relief, despite the defendants' failure to answer. Rosenbaum forwarded the Flynn and the appellate attorney comments to King and Hirsch.

Rosenbaum told investigators that the appellate attorney's comments confirmed his concerns about defendants MZ Shabazz and the NBPP, and that he disagreed with Flynn's conclusion that there was evidence in support of the allegations against them. Rosenbaum said he understood that the evidence to which Flynn was referring was a statement on the NBPP's website that the party was sending 300 members to polling places around the country, which Rosenbaum did not consider to be evidence that the party or its Chairman managed and directed the alleged activities in Philadelphia that violated

Section 11(b). King stated that "when you read [the appellate attorney]'s e-mails compared to [Flynn]'s, that they really were not saying the same thing and [the attorney]'s was a little equivocal," and that after looking at them she thought "they are totally opposite each other."

(10) Perrelli Provides Guidance

King and Rosenbaum advised Perrelli of the status of the NBPP case on May 7, during a regularly scheduled weekly meeting. Perrelli and Hirsch discussed the case at a staff meeting on May 11 and, on May 12, Hirsch instructed Rosenbaum to prepare an options memorandum for consideration in the event that the Division did not reach a consensus.

On May 14, Perrelli told Hirsch and Rosenbaum that, if the CRT leadership could not reach consensus on the case, they should seek another extension rather than presenting the dispute to Perrelli and Deputy Attorney General Ogden for resolution with a deadline of May 15. Perrelli told Hirsch and Rosenbaum that if Division leadership agreed on some kind of "middle ground" resolution that fell between two outer limits, it would be supported by Perrelli so long as it was consistent with the law and the facts, and it could be filed with the court immediately. The witnesses provided slightly different accounts of the outer limits that Perrelli said would require an additional extension of time for further consideration by Department leadership. According to Perrelli, the extremes were dismissing all four defendants without obtaining any relief, versus an injunction so broad it violated the First Amendment. According to Hirsch and Rosenbaum, Perrelli's second outer limit was an injunction against all four defendants.

(11) The Decision to Dismiss Three Defendants and Limit the Scope of Relief Against KS Shabazz

The deadline for filing the Motion for Default Judgment was May 15. On May 14 or 15, Rosenbaum raised new questions about the evidence pertaining to Jerry Jackson, the taller defendant who was present at the polling station in Philadelphia on Election Day but who did not carry the nightstick. Rosenbaum told investigators that his decision to take an additional look at the case against Jackson "admittedly came late," and that it was based on his review of the J-Memo (which he did not see until May 14), and was made "against the backdrop of a lack of candor in the [case team's] presentations to us, ..." On the morning of May 15, Rosenbaum asked Coates to identify the evidence relating to the allegations in the complaint that "Jackson made statements containing racial threats and insults" during voting hours, and that "Jackson made menacing and intimidating gestures, statements, and movements" directed at poll watchers. In response, Coates forwarded an e-mail from Popper that cited the following facts:

- The declaration of poll watcher Chris Hill stated that Jackson had formed up side-by-side with KS Shabazz to attempt to block Hill's entrance to the polling station. Hill's account was confirmed by another poll watcher.

- A Republican poll watcher reported that he received complaints that other Republican poll watchers were "approached and harassed" by Jackson (although these other poll watchers were not identified by Coates).

- A Republican poll watcher described poll watcher Larry Counts as scared and worried about his safety.[45]

- Larry Counts said that he and his wife Angela were afraid to leave the polling place while the NBPP members were present, and Angela said she was afraid the NBPP members would bomb the place.

- Another poll watcher reported that the NBPP members (without differentiation) were chanting "black man will rule white man."

- The witness statements generally did not differentiate between the conduct of Jackson and that of KS Shabazz, and suggested the men were operating in conjunction with each other.

Also on the morning of May 15, Rosenbaum told Hirsch that he was considering, among other things, whether the Division should file an amended complaint against KS Shabazz and Jackson but omitting the NBPP and its Chairman MZ Shabazz as defendants and correcting other allegations for which he believed the Voting Section had insufficient evidence. Rosenbaum also consulted with Flynn and the Appellate Section attorney who had previously given advice on the case, about the filing of an amended complaint and they supported the idea. Hirsch, however, opposed the idea because "it could only postpone or even frustrate entirely the goal of declaring [KS] Shabazz's actions as illegal and enjoining him from repeating them." After consulting with Perrelli, Hirsch e-mailed Rosenbaum that the amended complaint proposal struck both of them (Hirsch and Perrelli) as "a bad one."[46]

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[45] Coates's response did not mention that Larry Counts specifically denied that he was frightened by the Black Panthers when he was interviewed by Voting Section attorneys.

[46] Hirsch also stated in his e-mail that Perrelli "seemed puzzled" by another option that Rosenbaum had apparently raised, which involved pursuing default judgment at that time and reserving the issue of injunctive relief for later. According to Hirsch's e-mail, Perrelli did not understand why the Department could not resolve the entire case at the time, especially in light of the 14-day extension the court had already granted.

On the afternoon of May 15, King and Rosenbaum discussed the NBPP case with the CRT Chief of Staff and an Acting DAAG in CRT. Hirsch also participated in part of the discussion. Rosenbaum recommended, and King agreed, that the national party and its chairman MZ Shabazz should be dismissed from the action because of the lack of evidence that they had managed and directed the incident. Rosenbaum also recommended that Jackson be dismissed from the case. Rosenbaum told investigators that although Hill's testimony about Jackson moving to obstruct his entry provided some evidence of a violation of Section 11(b), the other evidence presented by the NBPP trial team was not persuasive. Rosenbaum noted that the allegation that Jackson attempted to intimidate Hill was undercut by Hill's public statement that he was not frightened. He noted that Jackson did not carry a weapon; that there was insufficient evidence that Jackson made verbal threats to anyone; and that, as a credentialed poll watcher, Jackson was entitled to be present. He also noted that the local police had permitted Jackson to remain at the scene, and that there was no evidence of any subsequent conduct of Jackson that violated Section 11(b). King agreed that Jackson should be dismissed as a defendant, for the same reasons, but she stated the decision about Jackson was "probably a much closer call" and something about which "reasonable minds can disagree."[47]

Rosenbaum and King also agreed that KS Shabazz should be kept in the case and enjoined from bringing a weapon to a polling place. However, they decided to limit the proposed injunction to polling places in Philadelphia (because there was no evidence KS Shabazz had traveled to engage in similar behavior outside of Philadelphia), to eliminate any prohibition on the wearing of the NBPP uniform (because of First Amendment concerns), to reduce the radius of the injunction to 100 feet from the polling entrance (deemed appropriate in a city environment), and to limit the duration of the injunction to three years (sufficient to last through several election cycles). Hirsch reported the results of the meeting to Perrelli. King told us that as a result of her discussions with senior Department personnel, she understood she had their "tacit approval" for her decisions.

Rosenbaum instructed Coates to revise the motion papers to be consistent with these decisions. Coates requested that the dismissal of the three defendants be without prejudice (in the event additional evidence came to light), and that the injunction be extended to 2013 (so as to encompass the next presidential election). King agreed to these changes. Later that day, Coates forwarded revised motion papers to the front office. King, Rosenbaum,

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[47] Hirsch told the OPR and the OIG that he would have not dismissed Jackson from the case if it were up to him, but that the Office of the Associate Attorney General deferred to the decision by the Civil Rights Division leadership because he thought the decision was not unreasonable.

and Hirsch edited the documents. In a contemporaneous document, Hirsch wrote that he sent Rosenbaum a "few minor line edits to the proposed order" and later provided Rosenbaum with handwritten edits to other papers submitted by Coates. He further stated that his edits were "designed to shorten and streamline the papers." The revised papers were filed with the court on time and, on May 18, 2009, the court granted the requested relief without an evidentiary hearing or oral argument.

(12) Perrelli's White House Meetings

During the period March through May 2009, Associate Attorney General Perrelli attended several meetings at the White House relating to a variety of matters within his portfolio unrelated to the NBPP case. Because of their timing, these meetings later became the subject of speculation regarding White House involvement in the NBPP matter. Perrelli told OPR that he never discussed the substance of the NBPP case with anyone at the White House or with anyone else outside the Department. Our review of Perrelli's e-mails and other documents uncovered no evidence of any discussions between Perrelli or anyone at the White House or anyone else outside the Department regarding the NBPP case.

(13) Public Statements about the Involvement of Political Appointees in the Decision to Dismiss Some Defendants

Senior Department personnel have made public statements minimizing the extent of the involvement of political appointees in the decision to dismiss some of the defendants from the NBPP case. In response to a document request to the U.S. Commission on Civil Rights ("the Commission"), the Department stated:

> Career supervising attorneys who have over 60 years of experience at the Department between them decided not to seek relief against three other defendants after a thorough review of the facts and applicable legal precedent. The Department implemented that decision. Political considerations had no role in that decision and reports that political appointees interfered with the advice of career attorneys are false. Consistent with the Department's practice, the attorney serving as Acting Assistant Attorney General for Civil Rights informed Department supervisors of the Division's decisions related to the case. The Department supervisors did not overrule that attorney.

The Department used identical language in a letter dated September 9, 2009, responding to an inquiry from Senator Jeff Sessions.

On April 16, 2010, in a supplemental response to an interrogatory from the Commission, the Department gave additional information about the role of political appointees in the NBPP decision, stating:

> As is customary with complex or potentially controversial issues, the then-Acting Assistant Attorney General for Civil Rights [King] advised the Associate Attorney General [Perrelli] that she was making a case-based assessment of how to proceed in this case, engaged in discussions with the Associate Attorney General's staff about how to proceed, and informed the Associate's office of her decision before it was implemented.

AAG Perez testified before the Commission on May 14, 2010, concerning the NBPP matter. Although Perez had not yet been confirmed as AAG and was not present in the Division at the time of the events in question, he appeared before the Commission on behalf of the Department in his capacity as AAG. Concerning the NBPP decisions, he testified as follows:

> COMMISSIONER KIRSANOW: Was there any political leadership involved in the decision not to pursue this particular case any further than it was?
>
> ASST. ATTY. GEN. PEREZ: No. The decisions were made by Loretta King in consultation with Steve Rosenbaum, who is the Acting Deputy Assistant Attorney General.

Later, in response to a line of questions about whether political leadership has responsibility and "ownership" of decisions in the Department, Perez described the briefing process in CRT, noting that the CRT leadership regularly briefs senior political appointees on specific cases and that:

> If indeed they have an objection or a concern about a decision that we are about to make, it is obviously their prerogative to weigh in and to say no, I don't want -- I would like to go in a different direction.
>
> So that happens. That happened when I was in Bush I. And that happens now. I think that's kind of been the standard operating procedure.

On June 1, 2011 (after the OPR report was issued), Perez testified before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, as follows:

> Mr. King: [T]he decision to drop the cases against the other individuals, you testified, was made not by political, but by career employees. And I think the names were Loretta King and Mr.

> Rosenbaum. Does that still remain the case, or would you wish to clarify that before the Committee?
>
> Mr. Perez: The decision was made by Loretta King and Steve Rosenbaum, two people who are career attorneys in the Division with combined experience of roughly 60 years or so.
>
> Mr. King: And it was not overruled or reviewed with input from political appointees, Perrelli and Hirsch?
>
> Mr. Perez: Well, again, as I have described before the commission, any time you make a decision--I have a regular Thursday meeting with the Associate Attorney General and other people on the leadership chain. When you are making a decision, I am about to do something, an issue in case A. We are about to----
>
> Mr. King: But the question was, it was not overruled by or influenced unduly by political appointees?
>
> Mr. Perez: No. And, again, the OPR report concluded, and they did not say that there was scant evidence or insufficient evidence of political interference. They said there was no evidence of political interference.

The OIG questioned Perez about the specific instances in which political appointees participated in the decision-making about the NBPP case in a manner that was more active than merely being briefed by King and Rosenbaum, including the following incidents: (1) Perrelli told Hirsch and Rosenbaum that if Division leadership agreed on some kind of "middle ground" resolution that fell between two extremes, it could be filed with the court immediately, but that any decision outside these guidelines would require an additional extension of time for further consideration by Department leadership; (2) Hirsch rejected Rosenbaum's idea about filing an amended complaint to omit the NBPP and its Chairman as defendants and to correct certain other allegations for which the Voting Section had no evidence; and (3) Hirsch edited the motion papers that were ultimately filed with the court.

Perez told us that he was not previously aware of these instances of participation by political appointees. However, Perez stated that these incidents were not inconsistent with his testimony to the Commission. He stated that the context of his testimony was responding to allegations that political appointees had exercised "undue influence" or "put a thumb on the scales of justice" during deliberations over the NBPP matter, and that these incidents did not reflect conduct of that type. Perez stated that these incidents were not involvement in the decision to dismiss three defendants and limit the injunction, because King made the decision in consultation with Rosenbaum and it was not changed by Hirsch or Perrelli. Perez also cited the Department's April 16, 2010, supplemental response to an interrogatory from the Commission (quoted above) as making clear to the Commission that the

decision-making process included discussions with the Associate Attorney General's staff (specifically Hirsch) about how to proceed.

Perez told us that he anticipated he would receive questions about the involvement of political appointees during his testimony to the Commission. He stated that when he asked King and Rosenbaum early on who made the decision, they told him it was King in consultation with Rosenbaum, and that the decision was not made by any political appointees. Perez told us that he did not ask King and Rosenbaum about their dealings with political appointees, and that after they told him that it was their call, he did not question them further. Perez told us he did not ask anyone in the Associate Attorney General's Office, including Perrelli or Hirsch, about the involvement of political appointees in the NBPP matter as part of his preparation for the hearing because of the pendency of the OPR inquiry, which he viewed as focused on the role, if any, of Department leadership in the case. Perez also stated that he did not recall any substantive conversation about the case with the Attorney General.

b. OIG Analysis of the NBPP Case

The decisions by the prior administration to bring the New Black Panther Party case and by the current administration to later dismiss three defendants who had already defaulted have proven to be controversial. We analyzed these decisions as part of our review of whether improper political or racial considerations affected the Voting Section's enforcement of the civil rights laws. We also analyzed public statements made by AAG Perez regarding the role of political appointees in the NBPP case.

(1) The Decision to File the Complaint

We first considered the actions of the Division in approving the NBPP complaint in January 2009 just prior to the new administration's inauguration, and the contention that the outgoing Division's leadership was motivated by improper racial or political considerations in bringing the case. We found no direct evidence, such as testimony or contemporaneous e-mails, and insufficient indirect evidence, suggesting such improper motivation.

We took note of the Section's recommendation to Division leadership that the Division file the complaint without following the Voting Section's "usual practice" of issuing a notice letter and proposed consent decree – and AAG Becker's approval of this recommendation. Absent this decision, the case would not have been filed prior to the change in administrations. Even if there was little chance that the defendants would agree to a settlement for the reasons suggested by Becker or otherwise, we were unable to identify any compelling need to file the complaint before the change in administrations, and we found no basis to conclude that the case would be harmed materially by

following the usual practice for Voting Section cases.[48] Adhering to the usual process would have given the incoming administration an opportunity to make its own decision about whether to file the case.[49] Instead, the outgoing Division leadership's decision to move forward immediately with the complaint, and not follow the usual process, created the perception that the decision was made in order to deprive the new administration of the opportunity to make its own assessment of the proposed litigation. However, we did not find sufficient evidence to conclude that the stated reason for this decision was pretextual or that the decision was motivated by improper racial or political considerations.

(2) The Decision to Dismiss the Complaint and Limit Relief

Critics of the decisions made in the NBPP case have alleged that the decision to dismiss three of the four defendants after the entry of default, and to narrow the scope of the proposed injunction against the fourth defendant, reflected hostility in the current administration to enforcing the voting rights laws on behalf of White victims or against Black defendants, a desire to protect the political allies of the Obama administration, or both. As detailed below, we did not find sufficient evidence to conclude that King, Rosenbaum, or the political appointees who approved the decision were so motivated.

The Entry of Default: Some members of the NBPP case team have contended that because the four NBPP defendants had failed to respond to the complaint and default had been entered against them, the case was essentially won and the decision to dismiss some of the defendants was legally unnecessary and unprecedented, reflecting a partisan or other improper motive. While the court's entry of default meant that the defendants were deemed to have admitted to the well-pleaded factual allegations of the Division's complaint, Rule 55 of the Federal Rules of Civil Procedure still required the United States to satisfy the court that it was legally entitled to the

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[48] In comments submitted after reviewing a draft of this report, Becker told the OIG that she believed the alleged threats of violence in the NBPP matter set this case apart from other Voting Section cases and that the NBPP case was more like criminal matters filed by the Division's Criminal Section, which did not follow the practice of giving prior notice to defendants before filing. We do not question Becker's authority to waive the notice letter procedure in this or any case. However, for the reasons stated in the text, we believe that the decision to do so in the unusual circumstances of the NBPP matter left the impression that the case was filed quickly in order to prevent the new administration from making its own assessment of the strength of the action.

[49] In comments submitted after reviewing a draft of this report, former Voting Section Chief Christopher Coates recounted a decision made a few days before the inauguration of the new administration in January 2001 to file a Section 2 action against Charleston County, South Carolina. Coates acknowledged that, unlike the NBPP case, a notice letter was sent to Charleston County before the case was filed.

injunctive relief it was requesting.[50] Fed R. Civ. P. 55(b)(2). The court's deputy clerk told the trial team that the court would likely hold a hearing on this matter, and the trial team had begun preparing to present evidence to establish the defendants' liability and the government's entitlement to relief. There was at least a possibility of an adverse judgment, and we believe it was reasonable and consistent with their supervisory obligations for the leadership of the Division to undertake to satisfy themselves that the injunction sought by the NBPP trial team was supported by the evidence and the law.

Dismissal of the NBPP and Its Chairman: We first examined the decision to dismiss the case against the NBPP and its Chairman, MZ Shabazz. In order to obtain the requested injunctive relief against these two defendants, the Division was required to establish that they "managed and directed" the conduct in Philadelphia that allegedly violated Section 11(b). This was a primary focus of the hard questioning of Coates and Popper by King and Rosenbaum during late April and early May 2009. The support offered by the trial team for "managed and directed" was that: (1) that the NBPP website stated before the election that 300 members in 15 cities would be ensuring the rights of people of color to vote and "provid[ing] security" against white supremacist threats; (2) that MZ Shabazz "endorsed" the actions in Philadelphia in interviews with the media and with the trial team after the election; and (3) that MZ Shabazz and KS Shabazz had a "long relationship through the NBPP."

We do not believe that this evidence was so strong that improper motives can be imputed to King and Rosenbaum for having found it insufficient to obtain a default judgment and the requested injunctive relief after they undertook what appeared to be a careful review of the evidence, which included consultation with appellate lawyers in the Division. We found that the legal and factual reasons outlined to us by King and Rosenbaum as the basis for their decision to not seek a default judgment and injunction against defendants NBPP Chair KZ Shabazz and the NBPP were well-considered. Among the reasons outlined were the following: neither the statements on the website nor those of MZ Shabazz in the post-election FOX News interview established that he or the NBPP instructed anyone to commit the acts in Philadelphia that allegedly violated Section 11(b), such as displaying a weapon at the polling place, directing racial threats or insults at poll watchers, or attempting to obstruct poll watchers from entering polling sites by standing shoulder-to-shoulder and moving in unison; the NBPP, like other organizations, was entitled to send persons to polling places for the purpose of assisting voters, and its stated intent to do so was not obviously evidence of a plan to intimidate voters or poll watchers; and there was no evidence that NBPP members appeared at any other polling sites on Election Day with weapons (or for that

[50] *See Comdyne I, Inc.* v. *Corbin*, 908 F.2d 1142 (3d Cir. 1990).

matter without them).[51] This last fact undermined the suggestion that KS Shabazz's conduct in bringing a nightstick to the polls was managed or directed by NBPP leadership pursuant to a coordinated strategy of intimidation.

Given their belief that there was an absence of sufficient evidence to establish the liability of the NBPP or its chairman, King and Rosenbaum concluded that the grounds for seeking an injunction against them were lacking.[52] We did not find sufficient evidence to conclude that this decision was the result of improper racial or political considerations.

Dismissal of Jerry Jackson: We next considered the decision to dismiss the case against Jerry Jackson, in order to determine whether the reasons given for that decision were a pretext for racial or political considerations.

We found that the evidence against Jackson, which was captured on video, was considerably stronger than it was against the NBPP or its Chairman MZ Shabazz. By dressing in the same manner as KS Shabazz in black clothing with Black Panther insignias and standing with KS Shabazz in front of the polling place entrance while KS Shabazz brandished a weapon, Jackson communicated that he was acting with KS Shabazz as part of a concerted activity. Moreover, there was no evidence that Jackson made any effort to disassociate himself from KS Shabazz when the latter displayed his weapon or directed racially hostile rhetoric at White poll watchers. Jackson contributed the presence of a second, similarly outfitted individual standing side-by-side in front of the doorway with his baton-wielding companion. Invariably, two individuals working together are more intimidating than one, even if only one is speaking or carrying a weapon. Moreover, there was no dispute that the evidence regarding KS Shabazz's actions were sufficient to establish a violation of Section 11(b); Division leadership did not dismiss the case against him and the district judge entered judgment against him.

The earliest evidence that Division leadership began explicitly distinguishing between the liability of Jackson and that of KS Shabazz that we were able to locate was late on May 14 or on the morning of May 15 - the same day that the Motion for Default Judgment was due and more than two weeks after King and Rosenbaum became deeply involved in reviewing the NBPP matter. Indeed, on the morning of May 15, Rosenbaum told Hirsch that he was

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[51] Although MZ Shabazz defended the conduct of the Philadelphia defendants after the fact during his FOX News interview, we are not aware of any evidence that MZ Shabazz admitted to directing them in advance to bring weapons or make racial threats toward anyone.

[52] We found the input provided by the Appellate Section on the liability of the NBPP and its Chairman was equivocal, due the fact that Flynn argued that relief should be sought against them while the appellate attorney questioned the basis for holding them liable.

considering the option of filing an amended complaint that would include both Jackson and KS Shabazz as defendants, but that would omit the NBPP and its Chairman and correct other allegations for which he believed the Voting Section had insufficient evidence. We found no evidence that anyone who had reviewed the case prior to that date, including the Division's appellate attorneys, found any basis for distinguishing between the conduct of Jackson and KS Shabazz in terms of their individual liability. Most of the discussions during that period were focused on the ability of the Division to seek injunctive relief regarding the charges against the NBPP and its Chairman.

We believe that, in making the decision on May 15 to dismiss Jackson, King and Rosenbaum inevitably were affected by their loss of confidence in the accuracy of the information that had been provided by the Section to Division management about the case. When Rosenbaum questioned the basis for the allegation made in the J-Memo and the complaint that Jackson had made racially threatening statements, he discovered that it was lacking. This discovery, which occurred shortly before a decision had to be made on the motion for a default judgment, and which was on top of the earlier discovery regarding the website disclaimer, led Rosenbaum and King to question the accuracy of the case team's representations despite the fact that objective evidence was available against Jackson on video and the fact that Jackson was a defendant who had already defaulted. The result, we believe, was a last-minute decision to dismiss the charges against Jackson. Indeed, Division leadership, on May 15, went from raising the possibility of filing an amended complaint against Jackson to deciding to dismiss the charges against him just several hours later. We found that this timing may have affected the quality, and certainly affected the appearance, of the decision to dismiss Jackson.[53]

We also took note of the fact that the controversy arose in the context of the contemporaneous discussions about removing Coates as Chief of the Voting Section, which was motivated at least in part by the belief that Coates would pursue "reverse-discrimination" voting cases (like the NBPP case) at the expense of more "traditional" cases. We believe that the larger concerns Division leadership had about Coates inevitably colored their view of the case he was advocating at the same time.

For purposes of this report, our assessment of the merits of Division leadership's judgment is relevant to the question of whether the reasons given for dismissing Jackson were a pretext for a decision based on improper racial or political considerations. Given the confluence of the factors that we outline

[53] After reviewing a draft of this report, Rosenbaum commented that "Division leadership often has to make decisions close to a filing deadline and in that decision-making process often solicits additional information from a Section." Rosenbaum noted that he argued an *en banc* appeal in a major fair housing case on May 13 and that he did not receive revised motion papers from the Voting Section until May 14.

in the preceding paragraphs, we found that there was insufficient evidence to conclude that the decision to dismiss Jackson from the suit was based on hostility to enforcing the civil rights laws against a Black defendant, or that it was made for improper political reasons.

Limiting the Injunction's Scope: We also considered whether the decision to limit the scope of the injunction against KS Shabazz was the product of an improper motive, and concluded that it was not. Rather, we found that decision was driven by concerns, informed by advice from the Appellate Section, that the nationwide relief proposed by the case team, which was unlimited in duration, was unduly broad in the absence of evidence of prior violations or activity outside the City of Philadelphia.

We also considered whether the fact that Acting AAG King and Acting DAAG Rosenbaum overruled the recommendations of career staff in the Voting Section was so extraordinary that it, by itself, suggests an improper motive. Some critics of the decision have asserted that King and Rosenbaum, as Acting AAG and Acting DAAG, were serving as political appointees, and have alleged that when political employees overrule career staff, this suggests some kind of partisan political motivation. We do not infer an improper motive by the leadership of a Division, without substantially more evidence, simply because the Division's leadership disagreed with a recommendation from career staff.

The Role of Higher Level Political Appointees: Higher level political appointees, including Associate Attorney General Perrelli and Deputy Associate Attorney General Hirsch, participated to the extent described above in important decisions in the NBPP case. We found that they set broad outer limits on the discretion of Division leadership to dismiss all of the defendants, rejected the idea of amending the complaint, and edited motion papers submitted to the court. In addition, Attorney General Holder was briefed on and generally indicated his approval of the decision by King and Rosenbaum to overrule the case team's recommendation and dismiss some of the defendants.[54] However, we do not infer an improper motive, without more, from these acts. Senior officials in the Department obviously are not required to recuse themselves from cases with potential political implications merely because they are political appointees. Based on our review of documents and the testimony, we did not find evidence to conclude that the political appointees approved the decision for improper partisan or racial considerations.[55]

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[54] We found no evidence that the Attorney General was specifically briefed on the proposal to dismiss the claims against Jackson. That proposal was not made until May 15, the same day the motion was due.

[55] We note that similar accusations were made regarding the overruling of career staff by political appointees in the prior administration, including in connection with the Mississippi

Cont'd

Based on our review of Department e-mails and the interviews we conducted, we found no evidence of involvement in this matter by political appointees outside the Department. Associate Attorney General Perrelli attended White House meetings near the time of the decision to dismiss some defendants, which some critics have claimed indicates White House involvement in the decision. Perrelli explained the purposes of his White House meetings and stated that the NBPP was never discussed. We are aware of and found no evidence to the contrary.

(3) Public Statements Regarding the Involvement of Political Appointees

As detailed above, AAG Perez testified to the U.S. Commission on Civil Rights, as a witness on behalf of the Department, that political leadership in the Department was not "involved" in the decision to dismiss three of the four defendants from the NBPP case, and that this decision was made by Acting AAG Loretta King in consultation with Acting DAAG Steve Rosenbaum. Perez also made it clear that King's decision was briefed to political appointees, who had the authority to overrule it but did not do so. Nevertheless, we found that Perez's testimony did not reflect the entire story regarding the involvement of political appointees in NBPP decision-making. In particular, Perez's characterizations omitted that Associate Attorney General Perrelli and Deputy Associate Attorney General Hirsch were involved in consultations about the decision, as shown in testimony and contemporaneous e-mails. Specifically, they set clear outer limits on what King and Rosenbaum could decide on the NBPP matter (including prohibiting them from dismissing the case in its entirety) without seeking additional approval from the Office of the Associate Attorney General. In addition, Perrelli and Hirsch advised against a course of action that Acting DAAG Rosenbaum said he was considering – namely, submitting an amended complaint to address certain factual assertions – and Hirsch edited the motion papers to be submitted to the court.

To be clear, there are no rules prohibiting political appointees like Perrelli and Hirsch from participating in such decision-making. To the contrary, involvement by senior Department officials in decision-making on specific matters, particularly potentially sensitive cases like NBPP, is both routine and appropriate.

We note that AAG Perez had not been confirmed at the time of the decisions at issue and we found that he did not know about these incidents at the time of his testimony to the Commission on May 14, 2010. Therefore, we

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and Texas redistricting cases and the Georgia Voter ID case and, as detailed in the section of this chapter dealing with Section 5, we found no basis to infer improper political considerations there either.

did not find that Perez intentionally misled the Commission. Nevertheless, given he was testifying as a Department witness before the Commission, we believe that Perez should have sought more details from King and Rosenbaum about the nature and extent of the participation of political employees in the NBPP decision in advance of his testimony before the Commission. The issue of whether political appointees were involved in this matter had already engendered substantial controversy, and Perez told us he expected questions about it would arise during his testimony.

In his OIG interview, Perez said he did not believe that these incidents constituted political appointees being "involved" in the decision. We believe that these facts evidence "involvement" in the decision by political appointees within the ordinary meaning of that word, and that Perez's acknowledgment, in his statements on behalf of the Department, that political appointees were briefed on and could have overruled this decision did not capture the full extent of that involvement.[56]

3. Selected Cases Since 2009

In this section we address two Section 2 and 11(b) matters since January 2009 as well as related incidents that became the focus of allegations that the Division leadership in the current administration was hostile to "race neutral" enforcement of the voting rights laws.

a. Factual Summaries

The Small Business Matter (2008-09) On November 13, 2008, roughly one week after the 2008 presidential election, the Voting Section received allegations of possible voter intimidation by the proprietor of a small business against her employees. In particular, the Section learned that the White owner of the business wrote a memorandum given to the staff in October 2008 that included the following paragraph:

> Thanks for all you do & remember to ensure job security here we are asking for you to support McCain/Palin. This is not a threat but I promise if Obama gets elected and starts implementing his economic plan - I will be forced to let some go. I will start with those that voted for Obama!

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[56] We note that the U.S. District Court in the District of Columbia stated in a July 2012 opinion in a NBPP-related FOIA litigation that: "The documents reveal that political appointees within the Department were conferring about the status and resolution of the New Black Panther Party case in the days preceding the Department's dismissal of claims in that case, which would appear to contradict Assistant Attorney General Perez's testimony that political leadership was not involved in that decision." *See Judicial Watch, Inc.* v. *U.S. Dept. of Justice*, --- F. Supp. 2d ----, 2012 WL 2989945, D.D.C. July 23, 2012.

Two of the business's employees – a Black woman and a White woman – had previously expressed support for then-Senator Obama in a public manner, such as placing an Obama bumper-sticker on a car and wearing an Obama campaign button at work.

Upon learning of the allegations, the Voting Section conducted an investigation into the matter as a potential voter-intimidation claim under VRA Section 11(b). The evidence established that the proprietor admitted writing the memorandum and making similar threats in meetings with her staff; that she subsequently apologized to her staff for the statements, including personal apologies to the two Obama supporters on her staff; and that she gave spending money to one of the Obama supporters who travelled to Washington, D.C. to attend the Obama inauguration and later included pictures of the employee at the inauguration in the business's periodic newsletter. Division leadership declined to pursue a civil action or an out-of-court settlement in that matter.

At least two former Section attorneys alleged to the OIG that Division leadership's decision not to pursue any action against the business proprietor was motivated by political considerations, exemplified current Division leadership's hostility to enforcement of voting rights laws on behalf of White voters, or both. We examined contemporaneous documents, including e-mails, and interviewed witnesses to evaluate those allegations.

Former Acting AAG Loretta King told us that she believed the elements of a Section 11(b) violation were present, but she identified several factors that were the basis for her decision not to take enforcement action against the small business owner. First, King told us the proprietor's conciliatory actions toward the employees after the election was relevant to her assessment of the seriousness of the potential violation and the need for federal action. Second, King told the OIG that she felt, after the dismissals in the NBPP case, that Section 11(b) cases could be "very explosive, politically explosive and that if we brought one, we better be sure that it was a case worthy of a federal lawsuit." She stated that she declined to bring a lawsuit as a matter of prosecutorial discretion.

As an alternative to initiating a lawsuit, King proposed that the Voting Section draft a letter to the proprietor proposing an out-of-court settlement of the potential Section 11(b) action. Newly-installed Deputy Assistant Attorney General Julie Fernandes decided not to pursue this measure.[57] Fernandes told the OIG that she believed this matter was outside the Division's jurisdiction because she understood that CRT has authority under Department regulations

[57] Fernandes had joined the Department on July 13, 2009, three days after King declined to pursue a lawsuit in this matter.

only over Section 11(b) matters that involve racial targeting, and that if the allegations involve voter intimidation without racial implications then only the Criminal Division or the U.S. Attorney's Office would have jurisdiction.[58] Fernandes told the OIG that the presence of White and Black victims would undermine evidence of a race-based motivation and therefore remove the matter from CRT's jurisdiction. In addition, Fernandes believed that the underlying allegations in the matter were "nickel-and-dime" issues, and that writing a letter to the owner of this type of small business was "awfully weak" and "just didn't seem right."

DAAG Fernandes's Comments at a Voting Section Meeting (September 2009): The Voting Section held a meeting with DAAG Fernandez on September 16, 2009, which included a wide-ranging discussion concerning the Section's work. Allegations later arose about comments by DAAG Fernandes at that meeting regarding Division leadership's priorities related to enforcement of Section 2.

The OIG's review of available evidence – which included interviews of several attorneys who attended the lunch and two sets of handwritten notes of the meeting written by career attorneys – established a consensus concerning the following facts. During the meeting, a Voting Section trial attorney asked Fernandes for guidance on whether Division leadership would pursue a Section 2 case in which both the anticipated defendants and victims were racial minorities – specifically, a matter in which a Black majority population was allegedly diluting the votes of a Hispanic minority.[59] Witnesses agreed that Fernandes's response to the question included statements to the effect that the Voting Section should focus on "traditional civil rights" cases and focus on political equality for racial and ethnic minorities.

According to Fernandes, the attorney asked a question about a hypothetical case involving a jurisdiction composed of racial or ethnic minorities, specifically Blacks and Hispanics. She stated that she gave a "professorial response," saying that it was a critical question and that they needed to develop a strategy. Fernandes said that her response also included statements that the Section should focus on "traditional civil rights enforcement" and that their core mission is providing equal opportunity to racial and language minority voters.[60] She told the OIG that the Noxubee and

[58] 28 C.F.R. § 0.50(a)(2) provides, in relevant part, that the Criminal Division is responsible for the enforcement of Section 11(b) "insofar as [it] relate[s] to voting and election matters not involving discrimination or intimidation on grounds of race or color."

[59] Several witnesses told us that they understood that the attorney had been developing such a case, although the attorney apparently presented the question as a hypothetical.

[60] Handwritten notes taken by Voting Section Deputy Chief Robert Popper and a trial attorney at the meeting substantially corroborate Fernandes's recollection of her comments.

NBPP cases were not on her mind in answering that question and that she did not instruct the Section to not bring certain types of cases.

When asked what she meant by "traditional civil rights enforcement," Fernandes told the OIG that she believed that CRT had shifted during the prior administration from "regular" civil rights cases in favor of what she believed were more peripheral matters, such as writing advisory opinions on HAVA and sending election observers to jurisdictions without evidence of problems with voter intimidation. In addition, she told the OIG that she believed that for eight years there was a wholesale neglect of cases involving African-Americans. Fernandes told the OIG that she believed the Division would approve a reverse-discrimination case involving a Black defendant and White victim, and that no reasonable person could have interpreted her support for equal opportunity in voting to mean that she would reject cases in which there is discrimination against White people.

Although there was general agreement among the attendees regarding what Fernandes said, there was a sharp disagreement about what attendees believed her comments meant. Several Voting Section attorneys stated that they understood Fernandes's response to the Section 2 hypothetical question to mean that Division leadership would not approve Section 2 cases against Black defendants and/or in favor of White voters, such as the Noxubee or NBPP cases. Other attorneys who attended the lunch, however, interpreted Fernandes's response to the hypothetical differently or did not recall the exchange at all. For instance, Voting Section Deputy Chief Timothy Mellett said in his OIG interview that he did not interpret Fernandes's statement to mean that Division leadership would not pursue cases like the Noxubee matter, but rather that she meant cases pursuing "traditional" claims would not "get[] memo'ed to death and delayed."[61]

Territory D Section 2 Vote-Denial Matter (2009-10): In March 2009, the Voting Section received allegations and initiated an investigation regarding a non-binding plebiscite in a United States territory (Territory D). The statute enacted by the Territory D legislature stated that the plebiscite in question was intended to present three options "to the Native Inhabitants of [Territory D] to ascertain their future political relationship with the United States of America, namely, Independence, Free Association or Statehood." The law establishing

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[61] With a few exceptions, we found that the attorneys' interpretations of what Fernandes meant by her statements divided along ideological lines: attorneys who understood Fernandes to be expressing hostility toward enforcing the voting laws to protect Whites or against minority defendants were typically those commonly perceived as conservatives who had been hired or promoted during the prior administration. Those who disputed this interpretation were generally the attorneys perceived as liberal, many of whom had been hired prior to 2001 or promoted during the current administration.

the plebiscite provided that only "Native Inhabitants" of Territory D – defined to include only citizens who were residents of the territory as of a particular date or their descendants – were eligible to vote in the plebiscite. The statute's definition of "Native Inhabitants" of Territory D effectively limited voters eligible to participate in the plebiscite to individuals of a particular ethnicity, who comprise a plurality of Territory D's voting-age population. The rest of Territory D's residents, which included a mix of Asians, Whites, and a very small number of Blacks, would not be entitled to register to vote in the plebiscite. The statute further provided that the plebiscite would be held on the date of a general election at which 70 percent of eligible voters are registered.

The Voting Section's leadership apparently discussed the inquiry with Acting AAG King in the spring of 2009. However, the evidence is unclear as to whether the Voting Section submitted a memorandum to the Division's leadership regarding the investigation at that time. Voting Section records indicate that an investigation was opened in March 2009, the same month the allegations were received.

In May 2010, the Voting Section attorney assigned to the matter proposed filing a Section 2 action against Territory D. This proposal was not approved by Section Chief Herren and no such proposal was forwarded to Division leadership. Herren described several factual and legal impediments to such an action, including significant jurisdictional concerns. In particular, Herren indicated that he believed the law was unclear about whether the Section could sue Territory D under the VRA. Herren also identified several other matters that were consuming Section resources at the time, including a series of "crisis situations," such as the post-2010 Census redistricting and the planning for the November 2010 elections, that resulted in belated handling of numerous proposals across the spectrum of the Section's work. Herren stated that several proposals to pursue other Section 2 matters, including investigations and lawsuits involving traditional minority victims, as well as investigations to enforce other VRA provisions, were stalled for comparable lengths of time in roughly the same period. Additionally, Herren indicated that the matter was not ripe given that the 70-percent threshold of registered voters required to hold the plebiscite had not been reached, and that it did not seem likely that the threshold would ever be reached.

No action was ever filed by the Voting Section. At least three current or former Voting Section attorneys told the OIG in substance that they believed that Division leadership and some Voting Section employees opposed pursuing the Territory D matter because it was perceived to assert a reverse-discrimination claim on behalf of Whites or against traditional minority classes.

In 2011, a private citizen of the territory filed a private action against the Government of Territory D challenging the plebiscite statute. The court

dismissed the private citizen's complaint without prejudice on the grounds that the controversy was not ripe.

b. OIG Analysis of Enforcement of Sections 2 and 11(b) Since January 2009

The OIG received allegations that Division leadership between 2009 and 2012 was hostile to "race neutral" enforcement of the voting rights laws and that the Voting Section would enforce Sections 2 and 11(b) of the Voting Rights Act only in "traditional" circumstances – namely, to protect minorities as historical victims of discrimination – and not against minority defendants or to protect White victims. We found insufficient evidence to conclude that Division leadership during this period had such a policy, or that the laws were enforced in a discriminatory manner to achieve that result.

First, we found no direct evidence, such as e-mails or memoranda, that the Division considered or espoused a policy of that nature. In addition, every witness from Division leadership during that time denied that such a policy existed or that they believed the VRA should be interpreted in such a rigid manner.

Further, our review of relevant matters did not provide sufficient evidence to establish a policy prohibiting cases against Black defendants or in support of White victims. As a threshold matter, we note that witnesses identified only a small number of potential "reverse-discrimination" cases during the relevant time period that allegedly evidenced a policy prohibiting the bringing of such claims, which provided a scant record to evaluate the allegation. Moreover, the conduct of Section and Division leadership in the matters identified by witnesses did not prove such an allegation.

For instance, several witnesses alleged that DAAG Fernandes's refusal to seek an out-of-court settlement in the small business matter evinced a policy against enforcing the statute in favor of White victims. We found no direct evidence establishing that her decision was based on improper racial considerations. Moreover, Fernandes's assertion that she declined to proceed with the case because of her belief that the Section did not have jurisdiction over such a claim was compelling, as the Department's regulations appear to carve out such claims from CRT's jurisdiction. We therefore did not conclude that Fernandes's actions in that matter were evidence of a policy prohibiting enforcement of Section 11(b) to protect White victims.

Some witnesses told us they believed King initially declined to bring a case against the small business proprietor out of concern that she would be accused of partisan bias for bringing a Section 11(b) case against a McCain supporter so soon after ordering the dismissal of three defendants in the NBPP case (involving an organization that had supported Obama). King admitted to

the OIG that the NBPP dismissals influenced her views of Section 11(b) and that bringing this case could be "politically explosive." However, King provided several additional reasons for not pursuing the matter. We believe that it was within the exercise of King's prosecutorial discretion to conclude, taking into account the small business operator's apparent contrition and conciliatory behavior after the election, that this matter did not merit a formal complaint in federal court even if the elements of a Section 11(b) violation could be established.[62]

Although we found no evidence of a policy prohibiting enforcement of Sections 2 or 11(b) to support White victims, the relevant evidence established or at a minimum suggested that some CRT leadership personnel and career Voting Section personnel disfavored non-traditional and reverse-discrimination cases. Specifically, we believe the statements by DAAG Fernandes at the September 2009 lunch meeting that the Voting Section should focus on "traditional" civil rights enforcement and that the Section's core mission is to provide equal opportunity to racial and language minority voters conveyed to Section employees that non-traditional claims would be a lower priority for Division leadership. We also found that the discussions about removing Section Chief Christopher Coates, which are addressed in Chapter Four, were based at least in part on his purported desire to bring reverse-discrimination cases, which supports an inference that such matters were disfavored by those seeking to remove him.

The Territory D Section 2 matter was cited to us as demonstrating that Voting Section and Civil Rights Division leadership disfavored reverse-discrimination cases. The Territory D matter was not a "traditional" Section 2 matter because many of the alleged victims were White and the potential defendants were not. Voting Section management identified to us several nondiscriminatory concerns about the viability of a VRA case against Territory D and reasons why the matter was a lower priority for the Section at that time. We took note of the fact that a court later dismissed a private action against Territory D, finding that the controversy was not ripe, which was one of the reasons cited to us by Section management for not pursuing the matter. From our review of the evidence, including the memoranda prepared by Section staff, internal Section e-mails, and witness interviews, we did not find evidence to establish that the Division's decision not to pursue a lawsuit against Territory D was motivated by improper racial considerations.

[62] King did not identify the issue that Fernandes later identified, namely that the Voting Section lacks authority under Department regulations to enforce Section 11(b) in cases where there is insufficient evidence of racial discrimination.

C. Conclusions Regarding Enforcement of Sections 2 and 11(b) Over Time

As detailed above, we found that the number of new Section 2 actions filed by the Voting Section has decreased dramatically in recent years. However, we do not believe that this change can be attributed to a hostility toward or reluctance to enforce Section 2. We also found insufficient evidence to support allegations that inappropriate racial considerations have affected Section 2 or 11(b) enforcement decisions made by Division leaders since 2001.

We found no evidence in any e-mails, documents, or testimony of any improper racial or political considerations in the decisions of Division management in Section 2 or 11(b) matters. We next looked at the most significant and controversial cases to determine whether they were handled in such a way as to support an argument that the reasons given were pretexts for such improper considerations. In general, we found that Division leadership made enforcement decisions based on the legal merits as they assessed them, and that there was insufficient evidence to conclude that these assessments were pretexts for politically or racially discriminatory decision-making. We found that during the prior administration, Division leadership supported the filing of two Section 2 or 11(b) cases on behalf of White voters against Black defendants, which was unprecedented, but that there was no evidence that these choices came at the expense of valid Section 2 or 11(b) cases on behalf of minority victims. We found that Division and Department leadership since 2009 has expressed a desire to emphasize "traditional" cases to protect the voting rights of members of groups who have historically been the victims of discrimination, but that there was insufficient evidence to conclude that this preference has come at the expense of valid Section 2 or 11(b) cases on behalf of White voters or against minority defendants.

We were critical of the process followed in connection with a small number of the decisions we reviewed, including the way the decisions were made to move forward with filing the NBPP case without following usual practice days before a new administration was inaugurated, and to dismiss one of the defendants later at the last minute with no change in the underlying evidence. However, we did not find that the reasons given for these decisions were a pretext for improper racial or partisan considerations. In general we found that throughout the period of our review and through different administrations, Division leadership acted within its enforcement discretion with respect to the enforcement of Sections 2 and 11(b).

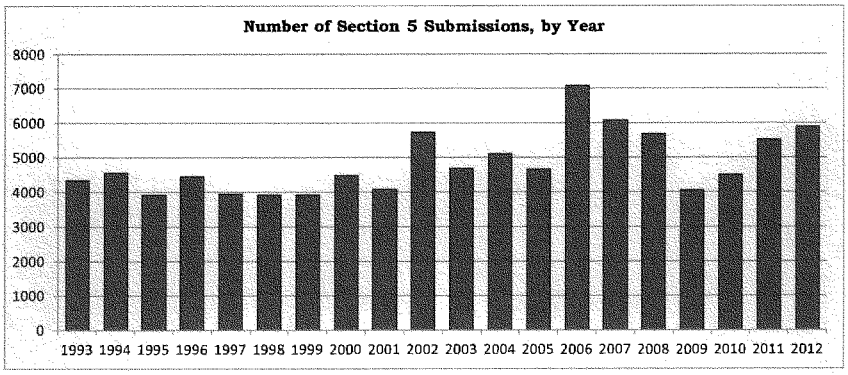
IV. Preclearance of Voting Changes under Section 5

In this section we examine the Voting Section's activities under Section 5 of the Voting Rights Act, relating to the preclearance of voting changes in certain jurisdictions.[63]

A. Data Regarding Submissions to the Voting Section Pursuant to VRA Section 5

Figure 3.6 displays the number of Section 5 submissions received by the Department on an annual basis from 1993 through 2012. As reflected in Figure 3.6, the total number of submissions received by the Section generally ranges from 4,000 to 7,000 submissions in any given year.[64] The Voting Section does not control the volume of Section 5 submissions received and addressed in any particular year.

Figure 3.6



Because the VRA requires preclearance of all voting changes, the overwhelming majority of submissions involve routine changes that are precleared with minimal scrutiny. As a result, the Section has historically interposed an objection regarding only a small fraction of submissions; in fact, since Section 5 was enacted, the Department has objected to roughly one percent of submitted voting changes that have been submitted. Likewise, in the period of time examined in this report (1993 through 2012), the number of

[63] As noted above in n 7, on February 27, 2013, the Supreme Court heard arguments on the constitutionality of Section 5 in *Shelby County* v. *Holder.*

[64] Submissions may involve multiple voting changes, and according to the Division, the Section reviews a total of between 14,000 and 20,000 voting changes in a typical year.

objections interposed by the Department typically amounts to less than one percent of submissions every year.

Thus, we were unable to draw any conclusions regarding changes in enforcement priorities under Section 5 from the available statistical data. Similarly, as with Sections 2 and 11(b), we found no evidence in any e-mails, documents, or testimony of any improper racial or political considerations in the decisions of Division management in Section 5 matters. We next looked at the most significant and controversial cases to determine if they were handled in such a way as to support an argument that the reasons given were pretexts for such improper considerations.

B. Examination of Selected Cases and Events Related to the Enforcement of Section 5

Although many election changes submitted for Section 5 preclearance relate to routine and uncontroversial matters, some high-profile matters, such as congressional redistricting plans, have obvious and significant implications for future elections and therefore become the subject of intense scrutiny and controversy. Some of these matters have become the subject of allegations that Division leaders or career staff made choices for the purpose of benefitting a particular political party, or that the reasons given for the Department's decisions were pretextual in nature. We selected those events that have been the subject of the most significant such allegations, and have grouped them according to the administration in which they occurred.

1. 2001 – 2008

Some high-profile preclearance decisions made by Division leadership during the prior administration were the subject of bitter disagreements between career staff and Division leadership, and became the focus of allegations that decisions were made on the basis of improper partisan considerations. In this part we examine several cases that became the subject of controversies of this nature.

Mississippi Redistricting: Following the 2000 census, Mississippi's congressional delegation was reduced from five members to four, and the Mississippi state legislature was unable to enact a redistricting plan. In December 2001, a Mississippi State Chancery Court ordered the implementation of a plan proposed by the Democratic Party. *Branch* v. *Clark*, No. G-2001-1777 (Miss. Chancery Ct. Dec. 21, 2001). Asserting that the chancery court lacked jurisdiction, Republican intervenors appealed the chancery court decision to the Mississippi Supreme Court and, in the meantime, continued to pursue an action in the U.S. District Court asking it to enjoin the chancery court from issuing a plan and to issue its own plan. On January 15, 2002, the District Court issued an order indicating that, because

it was unclear whether the State would have a plan in place by the March 1 deadline for qualifying candidates for that year's midterm elections, it would begin preparing its own plan. *Smith* v. *Clark*, 189 F. Supp. 2d 503, 504-07 (S.D. Miss. 2002).

The Mississippi Attorney General submitted the plan that had been approved by the State Chancery Court to the Department for preclearance under Section 5, requesting a decision by January 31, 2002, so that the State could implement the plan by the March 1 deadline. Essentially, if the Department precleared the plan by March 1, then it would become the official plan of the state (though there was a possibility the federal court could still enjoin its implementation); if the Department objected to the chancery court plan or deferred decision by requesting more information, the federal court would implement its own plan.

The Mississippi submission raised several legal issues. Among these was whether the Department, in evaluating the submission, should consider whether the chancery court had jurisdiction under state law to fashion a redistricting plan for the entire state and whether Article 1, § 4 of the United States Constitution precluded the chancery court from doing so.[65] A related issue was whether the Department should leave the issue of the chancery court's jurisdiction for resolution to the courts, and instead limit itself to analyzing whether the plan had a discriminatory purpose or retrogressive effect. A third issue was whether the Department's Section 5 regulations relating to "premature submissions" precluded the Department's review of the chancery court plan while it was being appealed to the Mississippi Supreme Court.[66]

Division leadership concluded that the chancery court plan was not ripe for Section 5 review and declined to act on it. Instead, the Voting Section issued a "request for more information" letter to the Mississippi Attorney General on February 14, 2002. The focus of the request for information was not whether the chancery court plan was retrogressive but rather whether the chancery court had jurisdiction to create and implement a statewide

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[65] Article 1, § 4 of the Constitution provides, in relevant part, that: "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof . . . ."

[66] 28 C.F.R. § 51.22 – Premature submissions. The Attorney General will not consider on the merits: (a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision; or (b) Any proposed change which has a direct bearing on another change affecting voting which has not received Section 5 preclearance. However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

redistricting plan. The request letter also raised concern about whether the Department should review the plan while it was on appeal to the Mississippi Supreme Court. We found that Division leadership drafted the request letter and directed Section Chief Joseph Rich to sign it.

Under the Department's preclearance regulations, 28 C.F.R. § 51.37(b), the effect of the letter was to extend the deadline for decision until 60 days after the state responded to it. Because of the litigation posture of the matter, the practical effect of the decision not to preclear the chancery court plan was that the plan was not approved by the March 1 deadline.[67] On February 26, 2002, shortly after the Department sent its request, the plan favored by the Republican Party was ordered into effect by the United States District Court. Several months later, the United States Supreme Court affirmed the District Court's decision and found that the Department's request for additional information was "neither frivolous nor unwarranted." *Branch* v. *Smith*, 538 U.S. 254, 263-64 (2003). Ultimately, in 2003, the Mississippi Supreme Court held that the State Chancery Court did not have jurisdiction to formulate a state-wide redistricting plan, *Mauldin* v. *Branch*, 866 So.2d 429, 433 (Miss. 2003), and the plan adopted by the U.S. District Court remained in effect.

Texas Redistricting: Republicans took control of both houses of the Texas state legislature in 2002 and in October 2003 the state legislature passed, and the Governor signed, a congressional redistricting plan. The plan was submitted to the Department for preclearance under Section 5, and the Voting Section assigned a team of lawyers, a civil rights analyst, and a statistician to review the plan. In December 2003, the Voting Section recommended that the Department object to the proposed redistricting plan.[68]

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[67] We were told that, as the March 1 deadline approached, there was a meeting involving a member or members of the Congressional Black Caucus and Division management. According to a Voting Section Deputy Chief, after the meeting, a Counselor to the AAG told the Deputy Chief, "we're with you on this, but it's out of our hands." Similarly, we found a January 29, 2002, e-mail sent by Section Chief Rich to Division leadership recommending that review of the plan be expedited in order to avoid confusion that would result if the federal court ordered a different plan while the chancery court one was still pending. The Counselor to the AAG responded, "[J]oe – we are with you in spirit on this, but the speed of the review is out of our hands on this one now." We asked AAG Boyd and the Counselor to the AAG if politics played any role in the Mississippi redistricting decision in light of e-mail and the reported conversation. Both Boyd and the Counselor to the AAG told the OIG that no one instructed them on how the Division should resolve the submission and that politics did not play any role in the decision. The Counselor to the AAG also told us that he had no recollection of ever speaking to the Voting Section Deputy Chief about the Mississippi redistricting matter.

[68] As noted in Section III of Chapter Four, in December 2005 a confidential internal memorandum prepared by the Voting Section's career staff transmitting its recommendation with regard to the Texas redistricting plan was leaked and became the basis for an article describing this incident as an incident of conflict between political employees in Division leadership and career employees in the Voting Section.

The Texas submission presented retrogression issues regarding whether certain redrawn districts in the proposed plan had previously been "safe" districts where minority voters could elect their candidates of choice. For example, available data suggested that Black voters previously had determined the outcome of the Democratic primary in District 24 and that the Democratic candidate (who was not Black) thereafter won the general election, indicating that District 24 had been a "safe" Black district. We found that, in evaluating whether to object to the proposed redistricting plan, the Division's leadership also considered data which showed that the Democratic candidate had run unopposed in every Democratic primary since 1986. Further, recent primary results for other offices in this district, which paired a Black non-incumbent candidate against a White non-incumbent candidate, showed that the Black candidate was usually defeated. Additional data indicated that White and Hispanic voters in this district rarely supported Black candidates in the primary, suggesting that the opportunities for success of Black candidates were limited. Taking this evidence into account, Division leadership concluded that District 24 was not a "safe" Black district. Because the elimination of a different "safe" Black district was balanced by the creation of a new "safe" Black district under the Texas plan, leadership concluded that the plan as a whole was not retrogressive as to Black voters.

After the redistricting plan was precleared by the Department on December 19, 2003, numerous plaintiffs challenged it in court, alleging various constitutional and statutory violations. This challenge raised numerous issues not addressed in the Section 5 preclearance review, but there was some overlap. Among other things, the plaintiffs alleged that Texas's redistricting plan caused vote dilution in some districts, including District 24, in violation of Section 2 of the VRA. On appeal, a plurality of the Supreme Court concluded that there was no vote dilution in District 24, in essence because (as Division leadership had concluded in connection with the Section 5 submission) Black voters did not have effective control of that district. However, the Court found dilution of Hispanic voting power in another district in violation of Section 2. *See LULAC* v. *Perry*, 126 S. Ct. 2594 (2006). Following the adjustments to the lines in that district, the Texas plan remained the legal districting plan until February 28, 2012, when a new plan was ordered into effect by the U.S. District Court for the Western District of Texas.[69]

Georgia Voter ID: In 2005, the Georgia legislature passed a voter identification law that reduced the number of acceptable forms of identification from 17 to 6. For most Georgians, the only acceptable form would be a driver's license. Georgia's Attorney General submitted the law to the Department for preclearance pursuant to Section 5 and the Voting Section assembled a team to review the submission. When the team requested additional help, Section

[69] http://www.tlc.state.tx.us/redist/redist.html (accessed March 8, 2013).

Chief Tanner assigned to the team a new attorney who had been hired directly from a clerkship six weeks earlier, and who was known in the Section to be politically conservative. Tanner told investigators that he chose the attorney because he "wanted to get to a decision expeditiously," and the review process provided a "training opportunity" for the attorney. Tanner said that he believed that Division leadership wanted a "diversity of viewpoints" on the review team because they lacked confidence in the Section 5 review process. Division leadership confirmed to us that they did not trust the original review team to act in a non-partisan and unbiased manner and believed that the review team was predisposed to recommending an objection to the Georgia Voter ID law.

The team proceeded under the assumption that there would be two recommendation memoranda prepared for Division leadership: one written by the new attorney and one written by the original case team. However, Tanner later agreed with Schlozman that there would be a single memorandum listing all of the team members as authors of the "factual review and analyses (sic)" and that Tanner would prepare a "separate covering memo with the Section recommendation." Tanner told OPR that the decision to have a single preclearance recommendation was motivated both as a managerial matter and by a fear that it would be leaked to the press.[70]

Based on our review of Voting Section documents, we determined that the evidence relevant to the Georgia submission was complex and at times contradictory. The available data from the State Department of Motor Vehicles about the race of approximately 60 percent of Georgia driver's license holders indicated that Black voters might actually be more likely to possess acceptable forms of photo identification than White voters, which suggested that the Georgia law would not disproportionately exclude Black voters. However, census data showed that a higher percentage of Blacks than Whites lacked access to a motor vehicle, suggesting that Black voters might be less likely than White voters to possess photo identification.

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[70] This change to the Section 5 recommendation procedure was controversial within the Voting Section. Critics expressed the belief that the purpose of the revised policy was to eliminate a paper trail of opposition to Division leadership's decisions and thereby to insulate it from public criticism. Tanner stated that "in hindsight" the change in policy immediately before a controversial matter like the Georgia submission might have been a mistake. In 2009, this policy was reversed. According to AAG Perez, current policy requires that when Division leadership disagrees with Voting Section staff recommendations, it sets forth the reasons for such disagreements in writing. Current policy also requires each staff member who works on a Section 5 submission to state whether they concur with the Voting Section's recommendation. Perez stated that he believes this procedure is particularly important given the quasi-judicial nature of the Division's pre-clearance reviews under Section 5 and what he feels was the importance of hearing a full range of views in making such decisions.

On the morning of August 26, Tanner submitted a single staff recommendation memorandum to Schlozman recommending preclearance. Schlozman directed Tanner to send the preclearance letter that same day.[71]

The Georgia Voter ID law was invalidated by a federal district court on other grounds in *Common Cause/Ga.* v. *Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005). The court found that the fee associated with obtaining the requisite photo ID was a poll tax and unduly impinged the fundamental right to vote. In 2006 the Georgia legislature passed a replacement bill, eliminating the fee and providing resources to create voter ID cards. The court subsequently dismissed the legal challenges to the Act and, when the amended Act was submitted to the Department for review, it was precleared.

2. 2009 – 2012

We reviewed two of the more controversial Section 5 preclearance decisions made by the Voting Section since 2009.[72] We also reviewed the Division's current interpretation of one element of the Section 5 legal analysis, which some witnesses alleged reflects hostility to enforcing Section 5 on behalf of White voters.

Kinston, NC: In November 2008, 63.8 percent of the voters in the city of Kinston, North Carolina approved to a referendum to switch from partisan to non-partisan municipal elections. The city submitted the proposed voting change to the Department for preclearance under VRA Section 5 in February 2009. In August 2009, Division leadership issued a letter objecting to the proposed change. In its letter to the city, the Department noted that Kinston was a majority-Black jurisdiction in terms of total population (62.6 percent), voting-age population (58.8 percent) and registered voters (64.6 percent). However, the letter stated that the city's Black community should be viewed as the minority population for analytical purposes because Blacks comprised a minority of voters in several previous municipal elections. The letter stated that there was racially polarized voting in Kinston and that its Black voters could elect their candidates-of-choice only with support from a small number of White Democratic voters who crossed over racial lines and voted on the basis of partisan cues. The letter concluded that switching to nonpartisan elections would remove the "partisan cue" and mean that the White cross-over

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[71] As discussed in Section III of Chapter Four, in November 2005 one of the internal memoranda relating to the Georgia submission was leaked and became the subject of a news report that the review team's recommendation had been overruled by higher-ranking officials in the Justice Department.

[72] The OIG's investigation covered the Voting Section's enforcement through 2011. We note that, although the Section became involved in several high-profile Section 5 matters during the pendency of this investigation in 2012, those matters fell outside the scope of our investigation and were not addressed in our review.

Democrats would be less likely to vote for Black candidates. It also noted that nonpartisan elections would eliminate the Democratic Party's campaign support and other assistance to Black candidates, including campaign funding. The letter concluded that under these circumstances, the city had not carried its burden of showing that the change had neither a discriminatory purpose nor effect. Some witnesses asserted that the objection was issued in order to protect the political power of Democrats rather than to protect racial minorities.

In April 2010, five Kinston residents filed a lawsuit in U.S. District Court against the Department to challenge the constitutionality of Section 5. On February 10, 2012, roughly two weeks before the Kinston case would be heard by the court, the Division informed the city that it was withdrawing its objection to Kinston's voting change because the Black electorate in Kinston had become large enough to successfully elect its preferred candidates in either partisan or nonpartisan municipal elections in Kinston. The Division stated that newly available information indicated that the Black portion of Kinston's voting-age population and registered voters had increased to 65.0 and 65.4 percent, respectively; that Blacks constituted a majority of voters in the November 2011 elections; and that Black candidates-of-choice won a majority of seats on the Kinston City Council in the November 2011 elections. In its letter informing the city that it was withdrawing its objection, the Department stated that the basis for the withdrawal was the "shift in electoral pattern" since the Division's August 2009 objection.

Noxubee County: As noted earlier, the Department sued the Noxubee County Democratic Executive Committee (NDEC) and its Chairman, Ike Brown, in 2007 for violations of VRA Sections 2 and 11(b) on behalf of White voters, a case that the Section won at the trial court and on appeal at the Fifth Circuit. In ruling for the Department, the district court found that Brown and the NDEC had violated VRA Section 2 (but not Section 11(b)) by administering and manipulating the political process in ways "specifically intended and designed to impair and impede participation of white voters and to dilute their votes." In its ruling, the court found that Brown had previously attempted to impose a party-loyalty requirement, which would exclude voters who were believed to be Republicans from Democratic primaries, "in part because of party loyalty concerns, but also as an attempt to discourage white voters from voting."

The court later issued an order that included the appointment of a Referee-Administrator to supervise the Noxubee Democratic primary elections through November 20, 2011. The order gave the Referee-Administrator authority over "all electoral duties" of the NDEC and expressly prohibited the enforcement of party-loyalty requirements on racially discriminatory bases.

In March 2010, roughly 20 months before the expiration of the court's order, Brown and the rest of the NDEC unanimously adopted a resolution to

exclude from Democratic primary elections in Noxubee any voter who had held office as a Republican, served on the Republican Executive Committee, or voted in any Republican primary election in the previous 18 months. The NDEC submitted its resolution to the Department for Section 5 preclearance in May 2010.

On July 12, 2010, the Department issued a no-determination letter in response to the Noxubee submission, stating that it would be inappropriate for the Department to address the submission because the NDEC failed to establish that it was authorized to submit such a change under the court's 2007 order. The no-determination letter did not interpose an objection to the proposed change, but nevertheless had the effect of preventing its implementation, unless the NDEC obtained preclearance from the Federal District Court in the District of Columbia. The next day, the Department moved the district court in Mississippi that presided over the 2007 trial for additional relief under its previous order – namely, that the court enjoin the NDEC and its agents from implementing the party-loyalty resolution, order that all requests for preclearance for voting changes while its order was in effect be submitted by the court-appointed Referee-Administrator, and extend its order for an additional two years, until November 20, 2013.

In March 2011, the district court granted the Department's motion to enjoin the NDEC from implementing the party-loyalty resolution and to direct that, as long as the court's order was in effect, only the Referee-Administrator had authority to submit requests for Section 5 preclearance of voting changes for Democratic Party primary elections. The court denied, for reasons not relevant to our analysis, the Department's request to extend its order for an additional two years.

Critics of the current administration have pointed to CRT's handling of the 2010 NDEC submission as evidence of the administration's hostility to "race-neutral" enforcement of voting laws. At the same time, CRT leadership has stated that its response to the Noxubee submission constitutes evidence of its commitment to evenhanded enforcement of the civil rights laws.

Section 5 Policy Regarding Coverage of White Voters: The Civil Rights Division's current leadership has stated that it interprets the "retrogressive effect" test under Section 5 not to be applicable to White voters who are in the numerical minority in a particular jurisdiction. This position has triggered allegations that the Division has refused to enforce Section 5 in a "race-neutral" manner.

As noted in Chapter 2 above, upon receiving a proposed voting change submitted by a jurisdiction covered under Section 5, the Voting Section reviews the proposed change to determine whether the change is free of discriminatory purpose and effect. In evaluating whether a proposed voting change has a

discriminatory effect, the Voting Section examines whether a proposed voting change would leave members of a "racial or language minority group" in a worse position than they had been before the change with respect to "their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976); *see also* 28 C.F.R. Part 51.54, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended Subpart F, Determinations by the Attorney General, Discriminatory Effect. This discriminatory effect is commonly called "retrogression" or a "retrogressive effect." *See id.*

In both public filings and statements to the OIG, the Division has stated that it interprets the non-retrogression principle of Section 5 to be "race-conscious," in that it does not cover White citizens when they are in the numerical minority in a covered jurisdiction. *See e.g., LaRoque* v. *Holder*, Case 1:10-cv-00561-JDB, Defendant's Motion For Summary Judgment, Document 55 Filed August 11, 2011, at pg. 41, n.11 (stating: "the non-retrogression principle of Section 5 has always been race-conscious in that it denies preclearance only to voting changes that 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise,'" quoting *Beer*, 425 U.S. at 141; *see also LaRoque* v. *Holder*, USCA Case #11-5349, Brief for the Attorney General as Appellee, Document #1358195 Filed February 13, 2012).[73] In a February 2011 letter to the OIG and in his OIG interview, CRT AAG Perez stated that interpreting Section 5's retrogressive-effect standard to not cover White citizens was consistent with the Division's longstanding practice, as well as case law interpreting the provision and the intent behind its enactment. Perez also told the OIG that he believed interpreting the retrogressive-effect prong of the analysis to cover White citizens would be inconsistent with the history of and intent behind Section 5, which he stated was enacted to remedy the specific problem of discrimination against racial minorities.[74] Perez's letter stated that the precise question of whether the retrogressive-effect prong of Section 5 protects White citizens has arisen "exceedingly rarely," but asserted that a series of Supreme Court opinions "has consistently recognized that Section 5 was enacted to deal with a particular historical problem of racial discrimination against minorities."[75]

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[73] In his letter and OIG interview, Perez also stated that the Division interpreted Section 5 to protect every racial group, including White citizens, from voting changes animated by intentional racial discrimination.

[74] In his February 2011 letter, Perez noted that the Division has always understood the term "minority" to mean not numerical minority, but rather "an identifiable and specially disadvantaged group."

[75] Perez's letter stated that no court had squarely addressed the issue and that the Division determined that the issue had arisen in only a handful of submissions over the 45 years since the enactment of Section 5, noting that the Section conducted some analysis of the

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In addition, according to Perez, applying Section 5's retrogressive-effect protections to White citizens would create "dramatic complications." In particular, Perez stated in his letter and OIG interview that he believed interpreting Section 5's retrogressive-effect prong to cover White citizens would be infeasible as a practical matter, noting that "many voting changes...will almost always have some racial effect in some direction," and if the retrogressive-effect standard protects everyone, then virtually no proposed voting changes would ever be approved.[76]

C. OIG Analysis of Section 5 Preclearance Review Activities over Time

As noted above, the Voting Section processes thousands of Section 5 preclearance submissions every year. The large majority are routine, and over 99 percent of the voting changes submitted to the Department by covered jurisdictions are precleared. Nevertheless, since 2001 there have been a small number of very high profile Section 5 matters that have become the subject of heated controversy.

Several witnesses alleged to the OIG that Division leadership's decisions in the Section 5 cases during the period from 2001 to 2008 were driven by improper political considerations. Specifically, some witnesses told us that they believed that Division leadership's decisions in the Mississippi, Texas, and Georgia Voter ID matters described above were made in order to benefit Republican candidates and interests.

We found no evidence in the form of contemporaneous documents or witness testimony to support a conclusion that improper partisan considerations drove these decisions by Division leadership. Moreover, our examination did not reveal evidence indicating that the reasoning given for the decisions in these cases constituted a pretext for a hidden partisan agenda. In that regard, we found it significant that in the Mississippi and Texas matters the bases for Division leadership's decisions were subsequently adopted in large part by several courts, including the United States Supreme Court. In the Georgia Voter ID matter, the critical question for Division leadership was whether minority voters possessed photo IDs in lower percentages than White voters sufficient to conclude that the requirements of the law would have a retrogressive effect. Division leadership relied on driver license data for

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impact of a proposed voting change on White citizens in connection with two submissions, occurring in 1981 and 1989.

[76] In his OIG interview, AAG Perez stated in substance that the Division's interpretation was the same as that of the prior administration. However, at least three AAGs from the previous administration told the OIG that Division leadership at that time did not have a policy to interpret Section 5's retrogressive-effect prong such that it would not cover White citizens.

approximately 60 percent of Georgia's driver's license holders suggesting that Black voters were more likely to possess acceptable identification than White voters. Although the conclusions were based on a somewhat incomplete data set, we cannot say that this was a pretext for improper discriminatory or partisan motivations.

Over the course of our investigation, other witnesses pointed to the Division's handling of certain Section 5 matters between 2009 and 2012 as evidence of improper considerations in Division leadership's decision-making. In particular, witnesses alleged that Division leadership refused to enforce or, at a minimum, was hostile to enforcing Section 5 on behalf of White citizens. Our review did not identify evidence to support such a finding. We note at the outset of our discussion that we did not identify direct evidence in e-mail or other documents to support such a conclusion, and that we found the indirect evidence identified by witnesses involving a small handful of Section 5 matters was insufficient to support such a broad conclusion.

One Section 5 matter to which critics of current Division leadership cited was the Noxubee Section 5 submission in 2010, in which the NDEC attempted to impose a party-loyalty requirement in Noxubee's Democratic Party primary elections. We concluded that the Section's response to that submission – namely, issuing a no-determination letter and seeking to enjoin the NDEC from implementing the proposed change and to extend the duration of the trial court's order – did not support a finding that Division leadership was hostile to the enforcement of Section 5 on behalf of Whites. Critics of current Division leadership argue that it should have taken a stronger position, such as objecting outright to the NDEC's proposed change. However, the Section's response of issuing a no-determination letter had the identical practical effect, *i.e.*, barring the NDEC from implementing the proposed change. We also note that, even though the Section effectively blocked the NDEC from implementing the change, it took the extra step of moving the district court in the 2007 Noxubee case to enjoin the NDEC from implementing the change and to extend the duration of the court's remedial order, which would have kept the Referee-Administrator in control of Noxubee's Democratic Party electoral matters for an additional two years. Those actions undercut the allegation that the handling of this matter evidenced hostility by Division leadership to enforcing Section 5 on behalf of White citizens.

With regard to the Division's handling of the Kinston submission, some witnesses and critics of the current administration asserted that the initial objection to the submission was designed to benefit Democratic politicians in the jurisdiction, and that the objection was withdrawn only when a judicial challenge posed the possibility of an adverse decision on the constitutionality of Section 5. We found no direct evidence indicating that the decision in the Kinston matter was based on improper partisan considerations. We are aware of no legal precedent that precluded the Division's analysis of the Kinston

submission and cannot conclude that it was a pretext for an improper political motivation. The possibility that fear of an adverse court ruling on the constitutionality of Section 5 may have been a factor in the decision is not relevant to the question before us, which is whether improper partisan considerations drove the decision. We found an insufficient basis to conclude that they did.

Finally, we did not conclude that current Division leadership's policy that the Section 5 retrogressive-effect prong does not cover White voters constituted evidence that Division leadership refused to enforce Section 5 to protect Whites. We found that their policy reflected their genuine view of how the statute must be interpreted under the law and their belief that Section 5's retrogressive-effect standard simply could not be administered in a way that would protect White voters. In making this finding, we emphasize that evaluating the merits of this policy, including Division leadership's legal interpretation of Section 5 and its assertion as to the feasibility of administering the retrogressive-effect analysis to cover White populations, is beyond the scope of this review. Nevertheless, we believe that Division leadership's policy reflects an interpretation of the law that is well within the discretion of senior management to hold.

In light of Perez's views on nonapplicability of the Section 5 retrogressive-effect prong to White voters, we asked him about his public statements about the Division's "race-neutral" enforcement of the voting rights laws. For example, during a hearing before the U.S. Commission on Civil Rights on May 14, 2010, Perez was asked: "Do you agree that the voting rights laws should always be enforced in a race neutral manner?" Perez responded: "Yes, sir." Perez told us that he "should have been more precise" in his answer, and he explained that his general public remarks were intended to convey that the Division enforced the laws in an "even handed" manner, and should not be understood to apply to specific provisions, like Section 5, Section 203, and Section 4(e), that he believed are inherently incapable of being applied in a "race-neutral" fashion.

V. Enforcement of the National Voter Registration Act (NVRA)

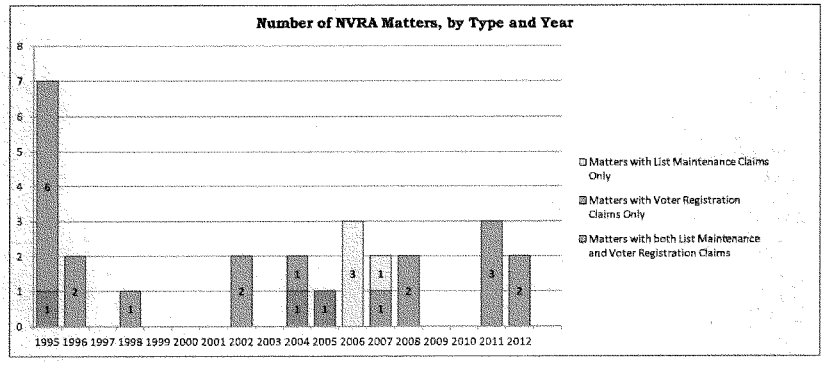
In this section we review the Voting Section's history of enforcing the National Voter Registration Act, the so-called motor-voter law. Enacted in 1993, the NVRA has two primary purposes: to increase the number of eligible citizens who register to vote in federal elections and to protect the integrity of the electoral process. 42 U.S.C. § 1973gg(b). Critics have alleged that CRT leadership during the prior administration favored enforcement of the list-maintenance (electoral integrity) provisions because those provisions purportedly are more strongly supported by Republicans and remove more potential Democratic voters from the rolls. Conversely, critics of the current

CRT leadership allege that it has neglected the electoral integrity provisions of the NVRA in favor of enforcing the voter access provisions, because these provisions purportedly are supported by Democratic constituencies and lead to the registration of more voters who are likely to support Democrats. Without opining on the underlying political assumptions, we examine both of these allegations in this section.

A. Data Regarding Enforcement Trends in NVRA Cases

Figure 3.7 below displays the number of NVRA enforcement actions initiated by the Voting Section on an annual basis since January 1995, when the statute became effective in most states. Figure 3.7 is broken down by actions that enforced the statute's list-maintenance provision (Section 8(a)(4)), actions that enforced the voter registration provisions (Sections 5, 6, 7, and the improper purging paragraphs of Section 8), and actions that brought both types of claims.

Figure 3.7 Number of NVRA Matters, by Type and Year



The most noteworthy trend in the Department's enforcement of the NVRA relates to the statute's voter list-maintenance provision, Section 8(a)(4). In the 17 years since the statute became effective, the Department has asserted list-maintenance claims on 7 occasions, 6 of which occurred in a 3-year span between 2004 and 2007.[77] According to Hans von Spakovsky, CRT leadership

[77] The only list-maintenance claim pursued outside of that 3-year period occurred in 1995, in response to the state of Virginia's constitutional challenge to the NVRA. Shortly after the NVRA became effective in January 1995, a flurry of litigation arose between the Voting Section and seven states regarding the constitutionality of the statute. In connection with each of these cases, the Department brought affirmative claims alleging that the states were violating the statute. The Department's claims in these cases alleged violations of numerous NVRA requirements, particularly Sections 5, 6, 7, and the improper-purging or failure-to-

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initiated an effort to enforce Section 8's list-maintenance provision in late 2004. Von Spakovsky told the OIG that he recommended to Division leadership exploring those cases because he believed that the Department had never conducted a systematic review of states' list-maintenance compliance in the 10 years since the NVRA became effective.[78] This effort ultimately resulted in the filing of a complaint alleging list-maintenance claims in 2005 and 2006. According to witnesses involved in the four other matters involving list-maintenance claims brought between 2004 and 2007, those claims arose when the Section obtained evidence suggesting a failure to comply with the list-maintenance provision during the course of ongoing investigations into other voting-related matters.

B. Enforcement of the NVRA during 2001 – 2008

We received allegations that the only NVRA cases that Division leadership wanted to pursue during this period were Section 8(a)(4) list-maintenance claims, at the expense of cases to protect or increase voter registration under other provisions of the NVRA. Critics further alleged that the Division's leadership was particularly focused on bringing such list-purging cases in political swing states and large Democratic jurisdictions. The Division's leadership denied any such focus and identified several cases approved by Division leadership to controvert the suggestion that NVRA enforcement decisions were driven by a partisan agenda. We examined the entire range of NVRA cases pursued during January 2001 to January 2009 in order to address this issue.

From January 2001 through January 2009, the Department was involved in 12 NVRA enforcement matters, summarized in Table 3.2.

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register provisions of Section 8. One of the Department's complaints, filed in the action defending Virginia's challenge, asserted a claim concerning voter list-maintenance procedures, stating that the defendant jurisdiction would not have procedures in place when the NVRA became effective for the removal of names of ineligible registrants from registration rolls.

[78] Although the Section included a list-maintenance claim in one 1995 case, the OIG did not find any evidence of any effort to enforce NVRA Section 8(a)(4) on a systemic basis prior to 2004.

Table 3.2 – NVRA Matters January 2001- January 2009

Year	Jurisdiction	Type of Matter	List Maint. Claims	Ballot-Access Claims	Brief Description of Allegations
2002	City of St. Louis, Missouri	Complaint filed		X	Defendant's procedures effectively removed eligible voters from registration rolls, in violation of NVRA Section 8's improper-purging provisions.
2002	State of Tennessee	Complaint filed		X	The state failed to ensure that driver's license applications would serve as voter registration applications and to implement voter registration opportunities in state public assistance offices, in violation of NVRA Sections 5 and 7.
2004	State of New York	Complaint filed		X	The state's public university system violated NVRA Section 7 by failing to offer voter registration opportunities at offices serving disabled students.
2004	Pulaski County, Arkansas	Complaint filed	X	X	Defendants failed to implement requisite voter registration procedures, failed to conduct an adequate Section 8(a)(4) list-maintenance program, and failed to ensure that any list-maintenance activities were conducted in a uniform and nondiscriminatory manner.
2005	State of Missouri	Complaint filed	X	X	A number of local jurisdictions allegedly failed to conduct effective list-maintenance programs, and some jurisdictions in the state employed list-maintenance procedures that did not comply with the NVRA's voter removal requirements concerning notice and timing.
2006	State of Indiana	Complaint filed	X		The state allegedly violated NVRA Section 8(a)(4)due to inadequate list-maintenance procedures.
2006	State of Maine	Complaint filed	X		Complaint, which arose from alleged violations of the Help America Vote Act (HAVA), included claim that the state failed to conduct adequate list-maintenance activities required under Section 8(a)(4).

Year	Jurisdiction	Type of Matter	List Maint. Claims	Ballot-Access Claims	Brief Description of Allegations
2006	State of New Jersey	Complaint filed	X		Complaint, which arose from a HAVA investigation, included a claim that the state had failed to conduct an adequate Section 8(a)(4) list-maintenance program.
2007	City of Philadelphia, PA	Complaint filed	X		Complaint brought claims under several voting-related statutes, including a claim under NVRA Section 8 for failing to remove deceased voters from registration rolls.
2007	Cibola County, NM	Complaint filed		X	Complaint included claims under HAVA and the NVRA, alleging violations of NVRA's voter-registration and improper-removal provisions by failing to ensure proper handling of voter registration applications, including hundreds of applications from residents of the Laguna Pueblo, and improperly removing voters' names from the voter registration list.
2008	State of Arizona	Out-of-court settlement		X	The state was allegedly not in compliance with NVRA Section 7 by failing to provide the required voter registration services at certain state aid offices.
2008	State of Illinois	Out-of-court settlement		X	The state was allegedly violating NVRA Section 7 by failing to provide the required voter registration services at certain state aid offices.

As reflected in Table 3.2, the Voting Section began filing list-maintenance cases in 2004. As noted above, von Spakovsky confirmed that Division leadership initiated an effort in 2004 to enforce Section 8's list-maintenance provision on a systemic basis. Von Spakovsky told the OIG that he recommended exploring those cases because he believed the Department had never conducted a systematic review of states' list-maintenance compliance in the 10 years since the NVRA's enactment.

Division leadership directed the Voting Section to conduct the research effort, to review the census data and voter registration data for all 50 states to determine which states had more people registered to vote than the voting-age population, as reflected in the census data. Based on the results of this research, the Section sent letters to 12 states, stating that the Section's review of relevant data indicated that the state may not be complying with Section 8's

list-maintenance provision and requesting information on their efforts to remove ineligible voters from their registration lists.

Von Spakovsky told the OIG that some of the targeted states responded to the Department's letter, explained why there was a discrepancy in the data, and established that they were complying with the NVRA's list-maintenance requirements. He also stated that a number of states failed to show that they were in compliance with Section 8(a)(4) and that the Section proceeded toward enforcement actions against those non-compliant states.

Division leadership approved the filing of two complaints as a result of this enforcement initiative. In November 2005, the Section filed a lawsuit against the state of Missouri alleging both improper purging and failure-to-purge violations. In June 2006, the Section filed a complaint against Indiana alleging that the state failed to conduct list purging as required by Section 8(a)(4). The Indiana case was resolved by a settlement agreement, but the Missouri case continued until early 2009, when the Division voluntarily dismissed the case.[79]

In 2006 and 2007, Division leadership approved three additional complaints containing Section 8(a)(4) list-maintenance claims, against the States of Maine and New Jersey and the City of Philadelphia. According to the Voting Section attorney supervising those efforts, these complaints did not arise out of the enforcement initiative described above. Instead, the complaints were brought as a result of investigations under the Help America Vote Act (HAVA) that uncovered evidence of both HAVA and NVRA violations. The Section ultimately settled the lawsuits with Maine, New Jersey, and Philadelphia. In each settlement agreement, the jurisdiction agreed to implement specific steps to satisfy its list-maintenance obligations.

In August 2007, Voting Section Chief John Tanner initiated a program to enforce Section 7 of the NVRA, requiring states to provide voter registration opportunities in public assistance and disability offices. Section attorneys reviewed federal Election Assistance Commission (EAC) data to identify states that were not meeting Section 7's requirements and discovered 18 states that reported registering 0 voters in offices providing public assistance over the previous 2-year period. Following further investigation, the Section entered into settlement agreements with Arizona and Illinois to resolve Section 7 violations.

In 2007 and 2008, Voting Section teams reviewed EAC data and census information to identify states that might not be in compliance with the NVRA's

[79] The circumstances surrounding the dismissal of the Missouri NVRA matter are discussed in Chapter Four of this report.

Section 8(a)(4) list-maintenance requirements. The teams identified states in which a significant percentage of the counties or electoral jurisdictions had more registered voters than voting-age population. The teams recommended to Division leadership that the Voting Section initiate investigations into the states that failed to meet the relevant criterion. The states that were the subject of these recommendations included some states that historically have consistently favored one party in presidential elections as well as political "swing states." The 2007 recommendation was approved and the Section later issued requests for information to the relevant states. Ultimately, however, no further enforcement action was taken arising out of this effort. The investigations that were proposed in late November 2008 were never approved by either the outgoing or the incoming administrations.

C. Enforcement of the NVRA during 2009 – 2012

1. Division Leadership Declines To Act on Voting Section Proposal for Section 8 Investigation

In February 2009, shortly after the new administration took office, the Voting Section submitted a memorandum to Division leadership requesting approval to initiate investigations into the list-maintenance procedures of a State ("State E"). According to the State E memorandum, voter-registration data indicated that roughly 22 percent of State E's counties had more registered voters than either the voting-age population or the citizen voting-age population. The memorandum stated that the Section had been alerted to State E's potential list-maintenance failures in connection with an unrelated Section 5 investigation. We were told that the Section never received a response from Division leadership to the proposal memorandum.[80]

2. Drafting of NVRA Guidance

In the spring of 2009, a few months after the inauguration of the new administration, the Department commenced an effort to draft public guidance concerning the requirements of NVRA Section 7. Samuel Hirsch, who joined the Department in March 2009 as a Deputy Associate Attorney General and led the NVRA guidance effort, described the project as rewriting the NVRA in plain terms and posting it on the CRT website to assist those running state governmental offices in complying with the NVRA's requirements. Hirsch told the OIG the original scope of the NVRA guidance project was limited to Section 7 because the administration believed that Section 7 had been somewhat ignored by state government officials. According to Hirsch, there was a sense

[80] The Voting Section also prepared a memorandum proposing a similar investigation with respect to another state's list-maintenance procedures in 2009. However, we found no evidence that this memorandum was ever forwarded to Division leadership for approval.

in the administration that NVRA Section 8 and other provisions were working fairly well, but that Section 7 "was slipping through the cracks."

DAAG Julie Fernandes and AAG Thomas Perez became involved in the NVRA guidance project after they joined the Department in July and October 2009, respectively. According to Fernandes, she expressed concern to Hirsch that the project was limited to Section 7 and proposed broadening the guidance to include other NVRA provisions, such as Sections 5 and 8. Perez also told the OIG that in early 2010 he instructed that the guidance include a discussion of all NVRA provisions, including the list-maintenance provisions. Hirsch told the OIG that he did not oppose expanding the guidance to include Section 8, but stated that he may have been opposed to holding up the release of the Section 7 guidance while preparing the Section 8 segment. The Division ultimately posted guidance concerning NVRA Sections 5, 6, 7, and 8 on its website in June 2010.

3. Comments by DAAG Julie Fernandes Regarding NVRA Enforcement at a November 2009 Section Meeting

DAAG Julie Fernandes told the OIG that she urged Voting Section Chief Christopher Coates to hold section-wide meetings shortly after she joined the Department in July 2009. As a result, the Voting Section held several brown-bag lunches. In addition to the September meeting at which Section 2 enforcement was discussed as outlined above, another session devoted to NVRA matters was held on November 10, 2009.

At some point during the November meeting, the discussion turned to the enforcement of the NVRA's voter list-maintenance provision in Section 8. Witnesses who recalled Fernandes's statements uniformly remembered that she said something to the effect that she was more interested in pursuing cases under NVRA Section 7 than Section 8 because Section 8 does not expand voter access. Witnesses' recollections of the context of Fernandes's statements, her precise wording, and the meaning of her comments, however, varied widely.

Thirteen witnesses told the OIG that Fernandes stated that she "did not care about" or "was not interested" in pursuing Section 8 cases, or similar formulations. For instance, Chris Herren, who was later promoted by current Division leadership to Section Chief, told the OIG that Fernandes made a controversial and "very provocative" statement at this brown bag lunch. In particular, Herren stated that Fernandes stated something to the effect of "[Section 8] does nothing to help voters. We have no interest in that." Herren told the OIG that he winced when he heard Fernandes's response because he believed it would raise a controversy. Two other Section attorneys took

handwritten notes at the meeting, both of which quoted Fernandes saying that she did not "care" about Section 8.[81]

Ten attorneys who attended the meeting told the OIG that they interpreted Fernandes's comments to be a clear directive that Division leadership would not approve Section 8 list-maintenance cases in the future. One Section attorney told the OIG that he understood Fernandes's statements to mean that proposing a Section 8 case would be futile and that he believed proposing Section 8 could be detrimental for the attorneys.

Seven Voting Section attorneys told the OIG, however, that they did not believe Fernandes said that the Division would not enforce Section 8 of the NVRA. Among these were three Deputy Chiefs who told the OIG that they believed Fernandes meant that Section 7 cases would be prioritized over Section 8 matters, but that they did not construe her statement to mean that Section 8 cases would not be approved. Those attorneys who were generally identified as being more conservative tended to recall that Fernandes took the more extreme position, while those generally identified as being more liberal tended to recall her statements as being more limited.

Fernandes told the OIG that she did not recall exactly what she said at the November brown bag lunch regarding enforcement of Section 8 of the NVRA. She said that she and the Section staff discussed the NVRA and what their approach, goals, and strategy should be. She said that she talked about how Division leadership is interested in creating equal opportunity for minority voters. Fernandes further told the OIG that she talked about wanting the Section to focus on voter access, which would involve NVRA Sections 5, 7, and 8, all of which are in the vein of ensuring that jurisdictions have a fair and accessible process for all voters. She stated that she recalled being asked about Section 8 and that her response included something to the effect that Division leadership's focus is on the provisions of the NVRA pertaining to voter access.

With respect to the comments attributed to her that she did not care about enforcing Section 8, Fernandes told the OIG that she did not think she said the words "don't care" about enforcing Section 8 because that is not her position. Fernandes denied saying that she or Division leadership had no interest in pursuing Section 8 cases. Fernandes said that she believed her comment about not caring was in the context of how to determine what jurisdictions they should target for enforcement, given that she believed there is widespread noncompliance with the NVRA.

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[81] One set of notes stated: "Julie – doesn't care about Sec. 8," and the second indicated: "Sec 8 – list is too big – not an access issue – 'don't care'."

Fernandes noted that the list-maintenance provision of Section 8 requires jurisdictions to employ reasonable, non-discriminatory measures to ensure that people who are eligible can vote and those who are ineligible cannot. Therefore, Fernandes stated, she does not care whether a jurisdiction's voter list is big, but rather whether it has a list-maintenance program that does not work. She explained that the fact that a jurisdiction's voter list is too big means that the Section may want to inquire about the jurisdiction's list-maintenance program, but that alone would not justify bringing a lawsuit.

Roughly one year later, in September 2010, allegations concerning Fernandes's comments at the brown bag lunch regarding NVRA enforcement surfaced in news media. Fernandes and other Division leadership personnel assisted other Department officials in preparing talking points to address the allegations and Fernandes stated in one of the relevant e-mails: "If we are o.k. with having priorities, we should say that we have a priority on the enforcement of the NVRA, with a focus on the parts of the statute that require states to provide voter registration opportunities in a variety of settings."

4. Approval of List-Maintenance Investigations

In September 2009, the Section submitted a memorandum to DAAG Fernandes requesting authority to initiate formal investigations into the list-maintenance procedures of eight states. The recommendation was based on the Section's review of an EAC report that contained voting-related data from each of the 50 states covering the period from November 2006 to November 2008. A Deputy Section Chief supervised a team of Section attorneys that reviewed the EAC report for anomalous entries, particularly states that reported that throughout the 2-year period they did not remove any voters from their rolls due to death or that they had not issued any voter-removal notices related to citizens who were believed to have moved out of the state. The team identified eight states that met one of those criteria, four of which reported removing zero ineligible voters from their rolls over the 2-year period for any reason, including death, change of address, disqualifying criminal conviction, or mental incapacity.

The team presented the relevant data in its memorandum to DAAG Fernandes and stated that the information suggested that the eight states in question were not fulfilling their list-maintenance obligations under Section 8. As a result, the team recommended initiating formal investigations of the states in question and directing inquiries to relevant state officials.

Fernandes told the OIG that, after receiving the proposal for the Section 8 investigations, she told Section Chief Coates that he needed to "hold off" because she was not ready to decide whether this was the proper approach for NVRA enforcement. Fernandes told the OIG that she believed the Section's

NVRA work when she became DAAG in July 2009 was disorganized and that its process for evaluating NVRA matters was "random, unstrategic, [and] not very well thought-out." She said that Division leadership and Voting Section management were therefore engaged in a process of identifying what their NVRA enforcement strategy should be by reviewing where the Section had focused its enforcement efforts in the past, determining which areas had been neglected, and developing an analytical model to bring NVRA cases.

According to Fernandes, she and Division leadership believed that the NVRA enforcement efforts from January 2001 through January 2009 had focused on Section 8's list-maintenance cases, largely to the exclusion of the voter-registration provisions in Section 7, which she believed had been under-enforced and neglected. While we found no evidence that she examined any data to support this belief, it was consistent with what we found to be the prevailing belief about the prior administration's efforts in this area. Fernandes stated further that she believed the way to "rectify this imbalance" was to determine what Section 7 efforts were in process, whether they were being performed correctly, and whether the Section should expand its Section 7 enforcement further. Fernandes stated that her supervisors were pressuring her to move forward on Section 7 enforcement and that she received a clear message that they viewed enforcing Section 7 as a higher priority than Section 8.[82] She told the OIG that she believed she had to "scratch the Section 7 itch" before turning to Section 8 matters and that her supervisors would have criticized her if she had approved Section 8 efforts first. She also noted that there was significant criticism of the Department from civil rights groups that their Section 7 enforcement efforts had been inadequate, saying they had gotten – and continued to get – "beat up all the time by [their] lefty friends on not doing enough on Section 7."

On November 10, 2009, two months after the team submitted the recommendation memorandum, the Section held the brown bag lunch concerning the NVRA, which is described above. Deputy Section Chief Robert

[82] The evidence established that CRT leadership repeatedly emphasized their desire to pursue NVRA Section 7 matters to Fernandes. Perez told the OIG that he made clear that enforcing Section 7 of the NVRA was a priority and that he exerted pressure on Fernandes to "pick up the pace" of the Section's NVRA enforcement efforts. In an e-mail following a June 2010 meeting with voting rights advocacy groups, Perez told Fernandes, Section Chief Chris Herren, and others: "I must candidly admit that I was also really pissed off during much of that meeting because I wholeheartedly agree with the sentiments offered by many in the group. I agree, for instance, that simply agreeing that section 7 enforcement is important, and sharing their desire to move forward, no longer cuts it. We said that last time and still have nothing to show and nowhere near having anything to show." In that e-mail, Perez directed Fernandes and Herren to present to him a J-Memo and draft complaint for a Section 7 case by Labor Day of that year. Similarly, in a July 2010 e-mail, former Division Principal DAAG Samuel Bagenstos wrote to Perez indicating that he had had "a lot of conversations with Julie" in recent weeks about various enforcement issues, one of which was NVRA enforcement.

Popper and the trial attorneys who proposed the list-maintenance investigations told the OIG that, based on Fernandes's comments at that brown bag lunch, they believed Division leadership would not approve the proposed investigations. Nevertheless, Popper told the OIG that he asked Section Chief Herren about the status of the proposal multiple times over the ensuing year, without receiving any response.

AAG Thomas Perez and Section Chief Herren told the OIG that they discussed the proposed list-maintenance investigations in the summer or fall of 2010, months after the proposal to Fernandes in September 2009. Perez told the OIG that the first time he discussed the list-maintenance proposals was in mid-2010. Herren stated that he recalled mentioning the list-maintenance proposal in a fall 2010 meeting with Perez, and Perez made it clear to him that he wanted to pursue those investigations. Herren told the OIG that he recalled that Perez said in the meeting that he wanted to live up to his public statements that the Voting Section under the current Division leadership would enforce all of the statutes under its jurisdiction and they discussed how to accomplish that goal. According to Herren and Perez, Herren cautioned Perez that it would not be appropriate to send out the list-maintenance letters that close to the November 2010 elections. Perez told the OIG that the Division waited to issue the letters after the elections in order to avoid the perception that the Department was improperly influencing the elections.[83] In an e-mail dated November 30, 2010, Perez specifically requested that the Voting Section provide him with an update on the status of those letters and indicated that he expected the letters to go out in early December 2010.[84]

On December 15, 2010, a former Voting Section attorney who had published articles and blog postings highly critical of current Division leadership, authored an editorial that criticized the Voting Section for allegedly failing to bring new cases. On December 20, 2010, Section Chief Herren e-mailed the trial team who had proposed the investigations to inform them that the list-maintenance proposals had been approved and requested comments on letters that he had drafted to the eight targeted states. Popper and the lead attorney on the investigations told the OIG that they never received an explanation regarding why there was a 15-month delay in approving the inquiries. The Section subsequently sent letters to the eight target states to

[83] Perez stated in his OIG interview that they were also discussing sending letters to a number of states concerning Section 7 compliance around the same time and he ultimately decided to wait until after the November 2010 elections to initiate those efforts as well, in order to avoid the appearance of "tipping the balance" in the election.

[84] Perez told us that he has repeatedly stated to both the Voting Section and to external audiences that the Division would enforce the entirety of the NVRA, including the list-maintenance provision. Perez further told us that this support was evidenced not only by his urging the issuance of the Section 8 letters in December 2010, but also by his instruction in early 2010 that the NVRA guidance should be expanded to include Section 8, as noted above.

request relevant information. According to Popper and the lead attorney, the team evaluated the states' responses to determine which states should be investigated further and ultimately concluded that the investigations were moot due to the expected release of updated EAC data in June 2011.

The attorneys working on this project stated the 15-month interval before the investigation was approved was unusually long, if not unprecedented, and that there was no change in the factual or legal issues that would have caused such a delay.[85] In addition, the Section attorneys stated that the handling of this proposal was unusual because notice letters like those sent to the target states in December 2010 are typically drafted by trial attorneys, not the Section Chief.

Herren told the OIG that he did not recall Perez mentioning the former attorney's article in discussing the Section 8 proposal and that Perez never indicated to him that the Section 8 proposal was approved as a result of the OIG investigation. Herren told the OIG that he believed the delay in approving those investigations was not a result of hostility to list-maintenance cases. Herren stated further that, while he understood Section 7 was a higher enforcement priority for the current administration, he believed they would consider Section 8 investigations as well.

Herren stated that he believed the delay in approving the proposed list-maintenance investigations was largely attributable to the "chaos" that surrounded the Voting Section and the fact that they "lurched from one crisis to another" throughout 2010. In fact, Herren stated that he could be blamed for delays in a wide range of matters because he was fully occupied on "crises" involving the Section. Herren said that there were numerous other cases and proposed investigations that were stalled during that timeframe, including investigations under VRA Sections 2, 4(e), and 203, and he was unable to address those matters with Perez as well.

Perez denied that the approval of the investigations in December 2010 resulted from public criticisms of Division leadership. Perez stated that he first discussed the proposed list-maintenance investigations roughly at the same time as the Section 7 proposal, which occurred several months before they were approved in December 2010, and that they waited to move forward on those proposals until after the November 2010 elections, per Herren's recommendation, in order to avoid an impression that the Department was attempting to influence the election.

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[85] Popper stated that he recalled other proposals that were approved after extended periods of time, but those instances involved extensive discussion between Division leadership and Section personnel concerning relevant facts or law. In contrast, Popper stated, there were no questions or comments from Division leadership for 15 months until the team was notified that the investigation had been approved.

Fernandes told the OIG that certain Section 7 investigations were approved before the Section 8 proposal. According to Fernandes, the difference in approval time reflected Division leadership's enforcement priorities, but she denied that the Section 8 decision was delayed pending the resolution of the Section 7 proposals. Fernandes also denied that she was stalling the Section 8 proposals and said that the 15-month delay in the approval of those investigations did not reflect a lack of interest in enforcing the Section 8 list-maintenance requirements. Instead, Fernandes stated that the delay resulted from the "chaos" in the Section, such as selecting and transitioning to a new Section Chief and conducting large attorney hiring and budget-related efforts. As a result, Fernandes stated, launching a new program under one provision of the NVRA was not high on her priority list at that time. Fernandes told the OIG that Division leadership and Voting Section management eventually stabilized the Voting Section and began moving forward on cases and matters.

Fernandes stated that the initiation of the OIG investigation (in the fall of 2010) was not a precipitating or contributing factor in the approval of the Section 8 investigations. Fernandes said further that the Voting Section generally faces "a heavy amount of scrutiny," and that she believed the current administration has received such attention from the outset.

D. OIG Analysis of Enforcement of NVRA over Time

We found that there was insufficient evidence to conclude that Division leadership enforced the NVRA in an improper partisan manner during the period from January 2001 to January 2009. A shown on Table 3.2, Division leadership approved eight enforcement actions (including settlements) relating to ballot-access violations compared to six actions to enforce the list-maintenance provisions of Section 8(a)(4).[86] This record does not support an inference that Division leadership was pushing list-maintenance cases at the expense of ballot-access cases for improper political purposes. No improper motive can be inferred from Division management's decision to pursue enforcement initiatives under Section 8(a)(4), especially given that so little enforcement of this provision had occurred previously.

We also found insufficient basis to conclude that Division leadership during the period from January 2001 to January 2009 was targeting swing states or Democratic-leaning jurisdictions for list-maintenance enforcement in order to benefit Republicans. We found no evidence, such as contemporaneous e-mails or documents, to support this belief and the criteria that were used to identify states for investigation or legal action appeared to be impartial and objective, and included jurisdictions with a variety of historical voting patterns.

[86] As noted, the actions against Missouri and Pulaski County, Arkansas included both list-maintenance and ballot-access claims.

Moreover, Division leadership's selection of jurisdictions for enforcement of ballot-access provisions of the NVRA also undercuts any inference of partisan motivation. Division leadership approved actions to enforce the NVRA's voter-registration provisions – which are commonly viewed as benefitting the Democratic Party and its candidates – in Missouri and New Mexico.

The evidence established that Division leadership between 2009 and 2012 clearly placed a higher priority on the enforcement of NVRA's ballot-access provisions, particularly Section 7, than the enforcement of the statute's list-maintenance provision. The Section engaged in five NVRA enforcement activities in that time period, all of which enforced the NVRA's ballot-access provisions. This prioritization is also reflected in several statements concerning NVRA enforcement from senior Department officials, including Deputy Associate Attorney General Hirsch's comments regarding drafting of the NVRA guidance; DAAG Fernandes's statement in the September 2010 e-mail concerning talking points regarding the Division's priorities; and Fernandes's statement to the OIG that she believed she had to "scratch the Section 7 itch" before turning to Section 8 matters and that her supervisors would have criticized her if she had approved a Section 8 matter before a Section 7 one. We also found that, although Fernandes's comments at the Section's November 2009 brown bag lunch may not have amounted to a clear rejection of list-maintenance enforcement, they at a minimum conveyed that such cases were a lower priority than the voter-registration provisions. We also believe that Division leadership's handling of the Section 8 list-maintenance investigation recommendations, including the failure to respond to the State E proposal and the 15-month delay in the approval of the eight list-maintenance inquiries, also conveyed this message.

We found, however, that the evidence did not support a conclusion that the decision to send out the Section 8 letters in December 2010 was triggered by an editorial criticizing the Department. Contemporaneous evidence shows that AAG Perez urged the Voting Section to issue these inquiries before the editorial was published. Moreover, we note that in early 2010 Perez instructed that the NVRA guidance project be expanded to address Section 8.

Although we found that current Division leadership has a clear priority structure for NVRA enforcement, we found insufficient evidence to conclude that they enforced the NVRA in a discriminatory manner. We found no direct evidence, such as e-mails, indicating or implying a racial or partisan motive for such prioritization. Moreover, the states in which the Section took enforcement actions during this time period (Georgia, Rhode Island, and Louisiana) are of varied geographies and political histories. It was within the discretion of senior management to prioritize enforcement efforts, particularly based on what appeared to be genuinely held perceptions about the need to redress previous enforcement imbalances.

VI. Language-Minority Provisions (Sections 4(e), 4(f)4, and 203)

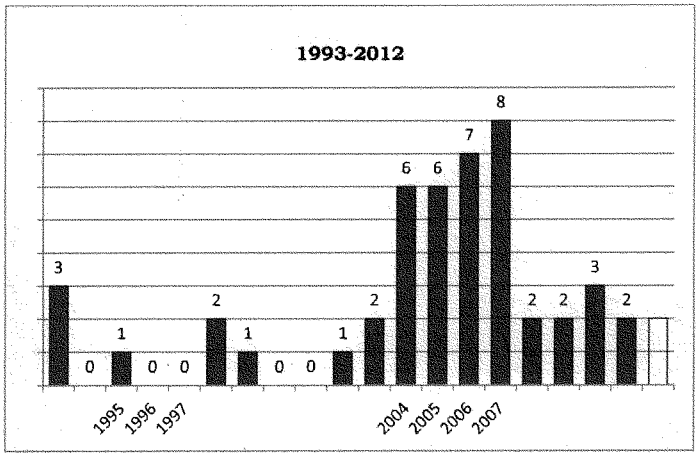
The provisions of the Voting Rights Act that protect language-minority voters are contained in Sections 4(f)4, 203, and 4(e). These provisions require that in certain states that contain sizeable language-minority populations, all election information that is available in English must also be available in the minority language so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.[87]

Some witnesses, including two Voting Section attorneys and one other Section employee, told the OIG that they believed, or heard allegations from other employees, that the Division leadership during the previous administration prioritized enforcement of the language-minority provisions over other voting rights cases for political reasons. In general terms, these witnesses asserted that Division leadership at the time emphasized language-minority cases to give themselves "political cover" for their failure or refusal to bring "traditional" Section 2 cases or to garner goodwill for the prior administration among the Asian and Hispanic populations, who would benefit most from the language-minority cases.

Figure 3.8 reflects the Section's efforts to enforce the language-minority provisions from 1993 through 2011. The enforcement actions noted in the figure include complaints filed by the Division bringing a language-minority claim, amicus briefs submitted by the Division in support of private plaintiffs' actions to enforce one or more of the language-minority provisions, and out-of-court agreements between the Division and local jurisdictions that enforce those provisions.

[87] Language minorities covered under the Act are limited to groups that Congress found to have faced barriers in the political process, namely American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens.

Figure 3.8



The OIG identified several trends in the enforcement of the language minority provisions, which are discussed below.

Increased Volume of Cases from 2001-2008: As reflected in Figure 3.8, the Section's enforcement activity related to the language-minority provisions increased dramatically beginning in 2004 and reached a peak between 2004 and 2007. In the three and one-half years between March 2004 and September 2007, the Section participated in 27 matters to enforce the language-minority provisions, which is more than the combined total of all other language-minority enforcement efforts since those provisions were enacted in 1975 (26 matters). This increased language-minority activity corresponds with the period in which John Tanner assumed managerial authority over language-minority claims and his subsequent promotion to Voting Section Chief. Although the Section has continued to enforce the language-minority provisions following Tanner's departure from the Voting Section in late 2007, the number of new cases of this type declined substantially.

Witnesses who worked in Division leadership during that period consistently told the OIG that the language-minority provisions were a clear enforcement priority. According to DAAG Bradley Schlozman and Hans von Spakovsky, who was Counsel to then-CRT AAG Alexander Acosta during the relevant time period, Acosta took a particular interest in the language-minority provisions and wanted to increase the Section's efforts to enforce those provisions.

Schlozman and von Spakovsky told the OIG that they believed the language-minority provisions had been neglected by previous administrations and that Section managers, particularly former Section Chief John Tanner, had successfully developed a more systematic process to identify targets for investigation and marshal evidence for such cases. In addition, Division leadership witnesses told the OIG that part of the motivation behind the increased focus on those provisions was that such cases were highly efficient, meaning that they required substantially fewer resources to develop and prosecute than other cases, particularly Section 2 matters, and that they could benefit a larger number of voters.[88]

Von Spakovsky told the OIG that he did not approach the language-minority cases from a political standpoint, and that no one that he worked with ever said anything to him to the effect that the increased enforcement of language-minority cases was designed to attract such voters to the Republican Party. Von Spakovsky also noted that he believed that the likely outcome of the increased enforcement of the language-minority provisions was to harm the prior administration and the Republican Party because those cases increased Hispanic voting and the vast majority of Hispanics do not vote for Republican candidates.

Schlozman also denied to the OIG that he had a political motivation for enforcing the language-minority provisions, noting that Acosta made it an enforcement priority and that he executed that directive. Schlozman stated further that he personally did not believe Section 203 was "a good statute" and would not have emphasized its enforcement. Schlozman also told the OIG that he did not believe there was a political motivation behind the prioritization of those cases and that he did not recall any specific discussion of the fact that such cases could garner goodwill for the Republican Party among the populations at issue. Schlozman told the OIG that, although he never heard any discussion that benefiting the Republican Party was the purpose behind the increased enforcement, he recalled some conversations in which others observed that increased goodwill among Hispanic populations would probably be "an added benefit to these cases."

Tanner also commented on allegations of politicized enforcement of Section 203 in his 2007 OIG interview. Specifically, Tanner stated that he had heard an allegation that the Section was pursuing language-minority cases to

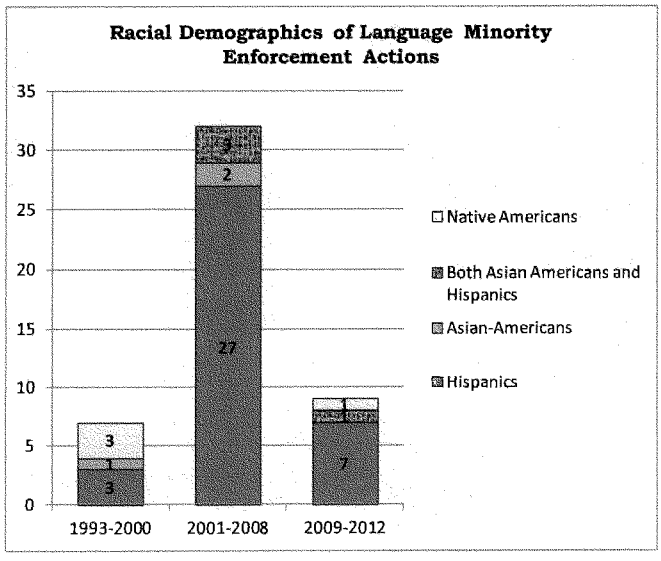
[88] We also note that Andrew Lelling, who was a Counsel to AAG Ralph Boyd from mid-2001 to mid-2003, before the increase in language-minority cases, told the OIG that the enforcement of language-minority provisions complemented the administration's view of voting rights enforcement, which focused on ensuring an equal opportunity to vote. Lelling also stated that the increased effort to enforce those provisions was in conjunction with the Voter Integrity Project, which the administration launched in response to alleged voting irregularities in the 2000 election.

sue Democratic jurisdictions and dismissed that assertion by noting that the Section during his tenure had taken action against three "big Republican count[ies]."

As noted above, some witnesses told the OIG that they believed Division leadership during the previous administration emphasized language-minority cases for political reasons. We did not find any direct evidence to support such allegations. We believe that it was within Division leadership's discretion to make Section 203 enforcement a priority for the Voting Section.

Changing Demographics of Language-Minority Cases: The OIG also identified two trends related to the minorities protected by the Section's enforcement of the language-minority provisions. Figure 3.9 below compares the composition of the populations protected in new enforcement actions filed by the Section during three different periods: 1993-2000, 2001-2008, and 2009-2012.

Figure 3.9



As depicted in Figure 3.9, while the number of cases is small, the OIG's review of the Section's language-minority matters indicates a decrease in the volume of enforcement actions taken on behalf of Native Americans. In fact, of the Section's 42 actions to enforce the language-minority provisions since early 1998, only one has protected the rights of a Native American population. Over

the same timeframe, the Section's enforcement has focused overwhelmingly on Hispanic populations, with all but three enforcement actions since early 1998 containing some claims on behalf of Hispanic voters.[89] Again, it is difficult to draw conclusions given the small number of cases at issue, and the OIG did not receive any allegations that any change in these numbers was motivated by improper racial or political motivations, so we did not examine them further.

VII. The Uniformed and Overseas Citizens Absentee Voting Act

Figure 3.1 reveals that from 1993 through 2012, the Section initiated 44 actions to enforce the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Fourteen of those actions were initiated in a single year, 2010, and eight more were initiated in 2012. UOCAVA enforcement was the single largest focus of new enforcement matters for the Voting Section in which the United States was a plaintiff from 2009 to 2012. According to the Department, the increase in the volume of the Section's UOCAVA work over the past several years was triggered by the passage of the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), which significantly expanded UOCAVA – including by imposing a requirement that jurisdictions transmit ballots to voters covered by the Act at least 45 days before a federal election.

Perez told the OIG that protecting service members' civil rights was "one of [his] top priorities" and that, in addition to the large volume of new cases filed under the MOVE Act, the Section invested considerable resources in education about and implementation of the new law. Current Voting Section Chief Christian Herren stated that the Section exerts significant effort to enforce UOCAVA in every federal election year, but that they were spending even more time in 2010 on such matters because of the newly enacted amendments from the MOVE Act. According to the Department, election cycles that follow enactment of a new federal voting rights law typically require a greater expenditure of Voting Section resources both to ensure that jurisdictions understand the demands of the law, and to take enforcement measures where necessary. The Department has informed us that these efforts, by necessity, reduced the resources available for other voting rights activities.

After reviewing a draft of this report, the Department stated that the beneficiaries of the Voting Section's UOCAVA enforcement are service members, their dependents, and overseas citizens – a group that is classed without regard to race and that includes large numbers of White voters. The Department commented that the Voting Section's comprehensive, resource-

[89] Four of the enforcement actions sought to protect both Asian-American and Hispanic voters.

intensive, and nationwide enforcement of UOCAVA since 2010 is inconsistent with allegations that the Civil Rights Division has been unwilling to enforce voting rights laws to assist White voters.

VIII. Conclusions

Numerous witnesses told us that they believed that improper partisan or racial considerations have infected enforcement decisions in Voting Section cases at various times since 2001. We believe that these allegations can be traced in considerable part to the fact that many Voting Section cases have actual or perceived impacts on political interests. The Section reviews redistricting cases that can change the partisan composition of congressional delegations and voter ID laws have actual or perceived impacts on the partisan composition of the eligible electorate. Division leadership makes choices on Voting Section enforcement priorities – such as whether to give greater emphasis to statutory provisions intended to increase voter registration or those intended to ensure the integrity of registration lists and prevent voter fraud – which are widely perceived to affect the electoral prospects of the political parties in sharply different ways.

Our examination of the mix and volume of enforcement cases brought over the past ten years by the Voting Section revealed some changes in enforcement priorities over time, corresponding to changes in leadership. However, our review generally did not substantiate the allegations we heard about partisan or racial motivations and did not support a conclusion that the Voting Section has improperly favored or disfavored any particular group of voters in the enforcement of the Voting Rights laws.

For example, we found no persuasive support for the allegation that Division leadership during the prior administration (2001-2008) was hostile to bringing Section 2 or 11(b) enforcement actions on behalf of Black or other minority voters, or that it gave less support for such cases than for so-called "reverse-discrimination" cases. Although the number of new Section 2 cases declined overall during that period, the number of new Section 2 cases brought since 2009 (under leadership that has not been accused of hostility toward Section 2 enforcement) has declined even more dramatically. Moreover, only 2 of the 13 Section 2 or 11(b) cases approved by Division leadership from 2001 up to the inauguration in January 2009 involved White victims of discrimination, a ratio that does not support any suggestion that leadership pursued such cases at the expense of cases on behalf of racial minorities.

When we examined individual Section 2 or Section 11(b) cases, we found that in most cases the leaders of CRT or the Voting Section responsible for these decisions – sometimes overruling the recommendation of career attorneys – were generally acting within their enforcement discretion and in several cases

were vindicated by subsequent judicial decisions. The only case cited to us that we found raised any serious question about Section 2 enforcement was the decision by leadership to prohibit a preliminary investigation in the County C case. Although this decision was inconsistent with prior and subsequent decisions by different Division leaders, we did not find it sufficient to support the larger ideological conclusion for which it was cited to us.

We also found that, although there was evidence to suggest that some personnel in Division leadership since 2009 felt that the Section's highest priority should be enforcing the voting rights statutes to protect "traditional" victims of discrimination – racial and ethnic minorities – there was no policy prohibiting enforcement of these statutes to protect White victims, and that the decisions that Division or Section leadership made in controversial cases did not substantiate claims of political or racial bias. In the New Black Panther Party matter, we found that there were well-considered reasons for dismissing the action against the two "national" defendants. While we found that the objective evidence to support an injunction against Jackson was substantially stronger than the evidence against the two national defendants, we did not find sufficient evidence to conclude that the decision to dismiss Jackson was driven by improper racial or political considerations. We found that there were legitimate non-discriminatory reasons for the Voting Section leadership to decline to pursue a case against the small business proprietor and to hesitate to devote resources to the Territory D matter. We could not from these cases, or any others cited to us, infer that leadership had a blanket policy against using the voting rights laws to protect White voters in appropriate cases.

We also found that allegations of politicized decision-making in Section 5 decisions were not substantiated. In the controversial 2002 Mississippi and 2003 Texas redistricting matters there were strong differences of opinion expressed during deliberations involving the Voting Section career attorneys and political appointees. After careful review we could not conclude that the positions taken by the participants were inconsistent with applicable law or that they were offered as a pretext for advancing partisan objectives. Although there were also differences of opinion among attorneys involved in the 2005 Georgia Voter ID matter, the decision recommended by the Section Chief and approved by Division leadership did not support a conclusion that it was improperly motivated. Likewise, the evidence did not establish discriminatory decision-making in Section 5 matters since 2009. The decisions made in the Noxubee and Kinston Section 5 matters and the Division leadership's interpretation of Section 5 retrogressive effect prong were within the discretion of management and did not reflect an improper refusal to enforce Section 5 on behalf of White voters.

We found that the allegations that Division leadership during 2001-2008 focused on list-maintenance provisions of the NVRA to the detriment or exclusion of voter-registration provisions of the statute were not supported by

the evidence. We also found insufficient evidence to conclude that leadership during that period targeted jurisdictions for enforcement of the NVRA for political purposes. We found that current leadership has exhibited a clear preference or priority for enforcing the voter registration provisions of the NVRA, but that there was inadequate evidence to conclude that this prioritization reflected improper racial or political considerations. Similarly, we found insufficient evidence to conclude that the Division leadership during 2001-2008 favored enforcement of the language-minority provisions of the Voting Rights Acts over other voting rights laws for political reasons.

In sum, we found that there were legitimate, non-discriminatory bases for the substantive enforcement decisions made by Division leadership in the high-profile, controversial cases handled by the Voting Section since 2001, and that these reasons were not a pretext for improper racial or political considerations. This does not mean that the Voting Section was functioning smoothly or well during that period. As detailed in the next chapter, we found that deep ideological polarization, both among career attorneys on different ends of the partisan spectrum and between some career attorneys and political appointees in Division leadership in both administrations since 2001, has at times been a significant impediment to the operation of the Section and has exacerbated the potential appearance of politicized decision-making.

CHAPTER FOUR
HARASSMENT OR MISTREATMENT OF VOTING SECTION EMPLOYEES FOR THEIR POLITICAL IDEOLOGY OR POSITIONS THEY TOOK ON PARTICULAR MATTERS

I. Introduction

In this chapter we address allegations we received that Voting Section employees were harassed, mistreated, marginalized, or removed due to their political ideology or the positions they advocated in connection with Voting Section matters. These allegations fell into three general categories: (1) peer-to-peer harassment of career employees; (2) Voting Section or CRT managers or leadership retaliating against career non-supervisory employees, and (3) CRT leadership removing, marginalizing, or mistreating some career Voting Section managers.

The OIG received a large volume of allegations in these categories, particularly regarding retaliation or other mistreatment by Section managers against career employees due to ideological views. As described in greater detail below, we concluded that it was impractical to investigate the majority of these allegations in this review due to the passage of time and the nature of the evidence we would have needed to examine. Instead, we focused on several incidents in each category for in-depth review. We selected incidents that related to the broader issues explored in this report, namely allegations of improper political or racial considerations in case decisions. We also selected episodes that multiple witnesses cited as having a significant impact on the Section. A third criterion was whether sufficient evidence was available to support a conclusion about the allegations in question. To examine the allegations related to the selected case-studies, we reviewed thousands of pages of e-mails and internal documents and interviewed numerous witnesses who were involved in the matters.

In Section II of this chapter, we review the evidence pertaining to several incidents in which career employees allegedly harassed or mistreated other career employees due to their political ideology or their positions on Voting Section matters. Section III of this chapter examines several incidents of disclosure of confidential or non-public information about Voting Section matters or personnel to media outlets that we found exacerbated mistrust among Voting Section employees or between career employees and Division leadership. Section IV of this chapter examines allegations Voting Section or CRT managers or leadership retaliated against career non-supervisory employees because of their political affiliations or positions they took in Voting Section matters. Section V of this chapter we examine evidence related to

allegations that senior Department and Division personnel took actions or otherwise mistreated Voting Section managers due to their ideological views or positions on Voting Section cases or matters. Each section presents our conclusions about the incidents at issue. In many cases, we obtained sufficient evidence to establish that the allegations of harassment or mistreatment were supported, while in some we concluded that the evidentiary record was mixed or did not support the allegations.

II. Allegations of Peer-to-Peer Harassment between Career Staff

In this section we describe the results of our investigation of incidents involving the alleged harassment of career employees by other career employees for their political ideology or their positions on Voting Section matters that were ideologically inconsistent with what their peers thought the Division should be doing.

A. Staff Conduct during Georgia Voter ID (2005)

In Chapter Three, we described the decision by Division leadership in 2005 to preclear the Georgia Voter ID law under Section 5 of the Voting Rights Act. As detailed in that chapter, the Georgia statute reduced the number of forms of voter identification that would be acceptable at the polls, and was the subject of sharp disagreements among career attorneys in the Voting Section. In this section we address allegations that one employee was subjected to harassment for his political ideology and the positions he advocated during deliberations over the Georgia Voter ID matter.

Deputy Chief Robert Berman assembled a team to review the Georgia submission, consisting of a trial attorney, a civil rights analyst, and a member of the professional staff.[90] When Berman requested additional help for reviewing the Georgia submission, Section Chief John Tanner assigned a recently hired attorney, Arnold Everett, to the matter.[91] According to the Department, Everett had not yet received formal Section 5 training and had virtually no experience in such matters. As we discussed in Chapter 3, Tanner told investigators that he chose Everett because he "wanted to get to a decision expeditiously" and the review process provided a "training opportunity" for Everett. Tanner said that part of the basis for his decision was his belief that Division leadership wanted a "diversity of viewpoints" on the review team because he understood that they lacked confidence in the Section 5 review

[90] An Attorney-Reviewer from the Section 5 group provided guidance to the review team, but was not engaged in the day-to-day review of the Georgia Voter ID submission and played a very minor role in the review.

[91] Arnold Everett is a pseudonym. We used pseudonyms throughout this report to protect the privacy of non-supervisory employees.

process. Division leadership confirmed to us that they did not trust the original review team to act in a non-partisan and unbiased manner and believed that the review team was predisposed to recommending an objection to the Georgia Voter ID law.

Witnesses told the OIG that the rest of the team viewed Everett and his assignment to the review team with suspicion for a number of reasons, such as the fact that Everett was a new attorney and just hired into the Department, knowledge that Everett was a conservative hired by Bradley Schlozman, who at the time was the Acting Assistant Attorney General for the Civil Rights Division, and a belief that Everett would be "skeptical about the need for an objection."[92]

E-mails revealed that shortly after Everett was assigned to the team, Hans von Spakovsky – then serving in Division leadership in a career capacity as Counsel to the AAG – began communicating directly with Everett about his views of the case without including the other team members. For example, von Spakovsky gave Everett an unpublished article that von Spakovsky had written on a different state's voter ID law that he told Everett not to share with the other team members. In an interview in a different investigation, then-Section Chief Tanner stated he was not aware of these communications at the time they were happening.

Everett, however, told the other members of the review team about his contacts with von Spakovsky, and we found that the knowledge of those contacts further strained the team's relationship with Everett. One review team member told the OIG that, after learning of Everett's communication with von Spakovsky, the team made it a point to be careful about discussing issues within earshot of Everett that they did not want Division management to know about. The review team also excluded Everett from various e-mails and meetings about the review, and did not share with him the first draft of the recommendation memorandum for the Section's leadership. One team member described Everett in an e-mail as a "hand-picked Vichyite" who was assigned to the review to produce data in support of preclearing the Georgia submission. Witnesses told us that that the office politics at the time was such that certain members of the career staff resorted to black humor when describing working in the Voting Section, including comparing the Voting Section to Vichy-controlled France during the Nazi occupation of World War II. One member of

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[92] One team member told us, after reviewing a draft of this report, that "the problems between the team members stemmed from an almost total lack of leadership from Voting Section management, and [arose] in a climate of real distrust among staff members." He stated that many of the actions described in the report "were largely the result of trying to deal with the frustrations created by the Section chief and ultimately the political appointees in that period." Two other team members expressed similar sentiments to the OIG.

the Georgia review team told us that he considered himself part of the "resistance" and that he and others used the term "guerilla war" to describe their actions in the Voting Section.

Everett told the OIG, and contemporaneous e-mails confirm that, after disclosing to the review team that he and von Spakovsky had been in contact, Everett did not communicate with von Spakovsky or Schlozman for a few weeks. Everett told us, however, that he then discovered that the rest of the review team had left him out of the process of drafting the recommendation memorandum and that, when he saw the draft, he had concerns about its completeness and accuracy. Everett then informed von Spakovsky of the situation, and they resumed communicating regularly about the case.

Von Spakovsky advised Everett that, if he disagreed with the draft recommendation memorandum, he should speak with Section management and discuss drafting a dissenting opinion. He also suggested arguments and analysis to Everett regarding the Georgia statute and warned him to password-protect any documents that he did not want the other attorneys on the case team to read. Going forward, Everett expressed to other team members his view – and that of von Spakovsky – that the Georgia Voter ID law should be precleared. We found that, as Everett expressed his views on preclearance, the other review team members became outwardly hostile towards him, in the form of arguments, refusals to assist him, and increasingly snide e-mails to him.[93] One team member told us he refused to assist Everett with a statistical analysis because he believed that Everett would not use the evidence honestly. Unbeknownst to Everett, another team member accessed his document directory on the Section's shared drive, copied a memorandum Everett had drafted about the case, and forwarded it to others on the team in an e-mail stating "lookie what I found in [Everett's] directory. Let's discuss amongst ourselves."[94] We further found that members of the original case team made

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[93] Some of the comments and actions directed at Everett were insulting. For instance, Everett and the original team members engaged in a lengthy e-mail debate about a State mobile voter registration program known as a Georgia Licensing on Wheels ("GLOW"). After the Georgia matter was over, one of the original review team members distributed mugs with a picture of the GLOW bus to other team members and others in the office. A review team member told us that the mugs mocked Everett. The team leader admitted to the OIG that it was inappropriate to use a photograph submitted as part of the state's preclearance submission in this manner.

[94] Although there was no prohibition in the Section on employees accessing documents on each other's directories, the purpose of this access was not to enable attorneys to retrieve and distribute each other's work without the author's permission. Access was typically used to enable attorneys to find information in each other's files, such as sample briefs or legal research, relevant to their own cases. Several months after the Georgia ID review, in the course of reviewing employee e-mails pursuant to an internal investigation relating to a different matter, Division leadership apparently discovered that one of the career employees on the Georgia team had accessed Everett's document and distributed it to other team members.

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unprofessional and disparaging remarks about Everett to each other and to other employees in the Section, mocking his intelligence, his legal acumen, and his personal beliefs.

In September 2005, after Division leadership pre-cleared the Georgia submission, Tanner held individual meetings with the three members of the original review team. According to the team members, Tanner criticized their recommendation memorandum and accused them of not being "team players" and engaging in unprofessional conduct toward Everett. Division leadership gave Everett a $450 "on-the-spot" award for his work on the Georgia Voter ID review. The other team members did not receive awards.

B. Treatment of Members of the Noxubee Case Team (2006-07)

As discussed in detail in Chapter Three, in 2006 the Voting Section filed a complaint under Sections 2 and 11(b) of the Voting Rights Act against the Noxubee County (Mississippi) Democratic Election Committee and its chairman, Ike Brown. The Noxubee case was developed and litigated by then-Special Litigation Counsel Christopher Coates along with two trial attorneys and an intern. This was the Department's first lawsuit under Section 2 of the VRA against Black defendants alleging denial or abridgment of the rights of White voters on account of race. Numerous witnesses told us that there was widespread opposition to the Noxubee case among the Voting Section career staff because it was being brought against Black defendants on behalf of White voters. We found that as a result of their hostility to the Noxubee case, some career staff harassed a Black Voting Section intern who volunteered to travel to Mississippi to assist the trial team, and mocked Coates for his work on the case.

The intern told the OIG that two career Voting Section employees made disparaging comments directly to him about his involvement in the trial. In particular, the intern recalled being questioned directly and indirectly about why he participated in this trial and told the OIG that Voting Section personnel made comments like: "You know why they asked you to go down there," "They used you as a token," and "People are saying, 'Why did you go down there?'" According to a memorandum drafted by Section management summarizing the incidents, the intern told a Section manager that the Voting Section employees informed him that someone who was attending the trial was reporting his activities and, therefore, the employees knew exactly where he was sitting in the courtroom and what he did at the trial.

Section Chief Tanner subsequently announced that files on one of the drives would be locked to prevent employees from accessing such documents without permission. It appears that the decision to lock the computer files most likely resulted from the discovery of what the team member had done. However, we were unable to question Tanner regarding this matter because he refused to be interviewed by the OIG.

The intern stated that those employees also told him about disparaging comments by other career CRT career employees who questioned why he would work on the case and insinuated that he was assigned to the matter because he was Black and that he had been used as a "token." The intern told the OIG that he understood that those employees included Pat Tellson, an attorney in the Voting Section, and Ellen Sydney, an attorney in a different CRT section who used to work in the Voting Section.[95] The intern stated that he understood from one or more Voting Section employees that Sydney had stated words to the effect that: "They only wanted you down there because you are a black face. How would it look for four white men down there prosecuting all these black people? They wanted you down there to show that it is not white against black. They used you because you were black and they needed a black face." The intern said that similar comments were directed at his mother, who was employed in a different component of the Division. For instance, the intern stated that one of the Voting Section employees approached his mother and said something to the effect that: "They got [the intern] down there working on this case on behalf of white voters. Why did you let them go down there?"[96] According to the intern, he perceived a broader "whisper campaign" in the office about his participation in the Noxubee case after returning from the trial, and he told us that this campaign continued for roughly one year.

The intern told the OIG that the remarks angered and insulted him by suggesting that he was duped into working on the matter. He stated the assertion that he was being used by the Noxubee team was incorrect, noting that he requested to work on the case numerous times. He said the comments affected his ability to do his job because they made him feel ostracized in the office. He said that as a result he kept to himself and stayed in his cubicle to avoid questions about the case. The intern stated that, although he never felt like he was a "token" while working on the case, those statements made him feel as though his participation in the case was wrong.

Sydney denied to the OIG that she made disparaging comments about the intern and his involvement in the Noxubee trial, but stated that she witnessed comments of that nature, including that Tellson had called the intern something to the effect of a "turncoat" in front of his mother. Tellson told the OIG that she believed the intern was being used in the Noxubee matter so that "they could have a black face at counsel table," but did not recall making comments about the intern's involvement in the trial. Tellson stated, however, that she told the intern's mother that it was "just wrong" that the

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[95] Pat Tellson and Ellen Sydney are pseudonyms.

[96] Likewise, Sydney e-mailed an article concerning the Noxubee trial to the intern's mother, with the statement: "Your federal tax dollars at work...." The intern's mother forwarded the e-mail, along with Sydney's comment, to her son shortly after he returned from the trial.

intern was sent to the trial because she did not believe interns were permitted to travel like that and because the intern was working on a project for her and it would stall while he was at the trial. She stated further that she believed the intern understood that CRT personnel "felt some opprobrium" about his work on the Noxubee matter.

We found that shortly after returning from the trial in early 2007, the intern grew so upset about the incessant comments that he reported them to Voting Section management, who in turn reported the incidents to the CRT Division leadership. The intern's mother also raised concerns about the matter with Loretta King, then a career DAAG in CRT Division leadership.

CRT management then investigated the incidents, including interviewing the intern and his mother. Christopher Coates, then a Deputy Chief, interviewed the intern and wrote up a lengthy e-mail detailing his allegations. Loretta King also interviewed the intern. King told us she told the intern that "he was a valued employee in the division, that I was very proud of him, that the work he was doing was important to the division, and he should not let people get him down." She told the OIG that she asked him whether he wanted her to take any action but that the intern told her: "No, I have it under control you know, everything is fine. Don't worry about it."

King also interviewed the intern's mother about the incident and, according to King's contemporaneous memorandum of the interview, the intern's mother said that Sydney made statements to her to the effect that the reason her son was working on Noxubee was that the trial team "need[ed] a black face" at their reverse-discrimination trial. The mother also told King that two career non-attorneys later made similar statements to her. The mother told King that she declined to file a formal complaint about these incidents at the time the comments were made because she thought the people were just "being nosy." In an e-mail about the incidents to the attorney's supervisor, however, King described the conduct as "quite egregious."

We found that the Division leadership orally reprimanded Sydney for making inappropriate comments to the intern's mother, as well as additional inappropriate but unrelated statements to other CRT personnel. According to Division records, Voting Section management orally counseled the two career Voting Section employees for making comments to the intern. We found no evidence that Tellson was disciplined.

The OIG also uncovered e-mails in which current and former Voting Section attorneys criticized and mocked Coates's work on the Noxubee case. For instance, in an e-mail sent to four former Voting Section attorneys after the Noxubee complaint had been filed but before the trial began, Sydney referred to Coates as a "klansman." Likewise, a non-attorney employee in the Voting Section wrote in an e-mail to a Section attorney: "[P]ersonally i think that the

architects of the [Voting Rights Act] and those who fought and died for it are rolling over in their graves with that perversion of the act ... im sorry, but [White people] are NOT covered for a reason." During the course of the Noxubee trial, a group of current and former Section attorneys exchanged e-mails that celebrated perceived setbacks for the Department's case and appeared to express hope that Coates and the Department would lose the Noxubee trial.[97] We found as a result of our e-mail review that after the Noxubee case concluded, current and former Section attorneys who were opposed to the case continued to make derisive comments about Coates and his prosecution of the matter.[98] We found no evidence that Division leadership or Coates were made aware of these particular messages at the time, although Coates has on numerous occasions stated that he was the subject of overt hostility in the Section because of his role in the Noxubee case.

C. Conflict during Election Monitoring in County D (2006)

As we discuss in Chapter Three, the Voting Section sent election monitors, including observers from the Office of Personnel Management (OPM), to observe a primary election in County D in 2006. This decision arose out of two separate investigations of voting irregularities in County D, one of which examined allegations that White political leaders were engaging in illegal voting practices targeting Black voters, and another that examined allegations that Black leaders of a local political organization in County D were engaging in absentee ballot fraud and improper voter assistance.

Voting Section Chief John Tanner sent trial attorneys Carl Mannett and Arnold Everett to participate in the election monitoring.[99] Mannett focused on the allegations of abuses by White political leaders and argued strenuously in a memorandum to Tanner that the election monitors should not be investigating absentee ballot fraud because: (1) such an investigation would take the Voting Section away from its traditional right-to-vote and access-to-the-polls focus; (2) voting fraud is a criminal matter outside the Voting Section's jurisdiction; (3) such an investigation would undermine the willingness of members of the Black community to cooperate with the Voting Section; and (4) the Department

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[97] In one such e-mail, a Voting Section attorney wrote to another CRT attorney who had previously worked in the Voting Section that "Your man [Chris Coates] is going down on this."

[98] For example, after a court issued a ruling in favor of five Native American plaintiffs in an unrelated Section 2 case, CRT attorney Sydney, who previously worked in the Voting Section, wrote in an e-mail to two former Voting Section employees: "Never fear. I'm sure that after his resounding success in the Noxubee case, Mr. Coates and his loyal sidekick will pick up the mantle and fight the good fight against the five American Indians in this case!" One of the former Voting Section attorneys responded to this e-mail, stating: "Mr. Coates' success in Noxubee is simply outstanding - he is, after all, one of the best at what (?!$@$#) he does."

[99] Carl Mannett is a pseudonym.

would be severely criticized if its first investigation into voting fraud in County D pursued allegations against Black politicians that were popular with the Black community. Tanner rejected Mannett's arguments and authorized Everett to collect information relevant to the allegations of absentee ballot abuse and improper voter assistance by the Black political organization during the election monitoring.

Over the course of the election monitoring, Mannett and Everett had several disagreements and engaged in shouting matches. One illustrative disagreement involved Everett's presence in a County D polling station. Everett told us that he observed apparent improper assistance of voters and, according to contemporaneous notes written by Everett, he directed the OPM observers to take notes about the incidents. Mannett, on the other hand, told us that he heard from an OPM observer that Everett had been in the polling station for two hours and was asking voters improper questions.[100] After receiving this information, Mannett called Everett and told him that it was against state law for anyone other than OPM observers to enter polling places and that he should leave the polling place, but with the caveat that Everett could enter for a short period of time if there was an emergency. Mannett then called a Voting Section manager stating that Everett was violating the law, and the Voting Section manager directed Everett to leave the station.

That evening, Everett and Mannett engaged in a heated argument. Everett told the OIG that Mannett shouted at him: "[y]ou think I want to mess with some Federalist Society attorney under a Republican administration?" Mannett told us that he said this in frustration because he viewed Everett as a deeply conservative attorney who was protected because he and Coates shared the same political ideology as the Division's political leadership.[101] Everett told the OIG that he believed Mannett's comments were evidence of his bias against those he perceived to be conservative and an animosity to those who wanted to enforce the VRA in a race-neutral manner and on behalf of White citizens. Everett reported the incident to Section Chief John Tanner, who he said advised him to go to the CRT Ombudsman. Everett told us he expressed an initial desire to file a formal complaint with the Ombudsman, but later withdrew it because he did not want to draw additional attention to himself.

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[100] Mannett told the OIG that he received a written report from an OPM poll watcher discussing Everett's behavior, which he provided to us. In the handwritten notes, the poll watcher states that Everett told the poll watchers to report on the "assistance problem" and to find out from the voters the reasons for their assistance. The notes further indicate that Everett had been inside the polling station for over two hours and that the OPM Captain advised the observers not to talk with the voters about why they needed assistance.

[101] After reviewing a draft of this report, the Department told us that, according to Mannett, he tried to talk to Everett in a "diplomatic" way that evening and that Everett lied to him, saying that he was only in the polling site for a few minutes.

D. Harassment of a Non-Attorney Employee by Section Attorneys (2007)

In February 2007, Voting Section management received a complaint that three male trial attorneys, who were perceived to be conservatives, had a conversation with a non-attorney male employee in which the three attorneys made inappropriate and harassing comments about a female non-attorney employee, who was perceived to be a liberal. Contemporaneous documents indicate that the attorneys made highly offensive and inappropriate sexual comments about the employee, including her sexual orientation, and remarks about how she was "pro-black" in her work.

Division leadership told us that Section Chief Tanner counseled the three attorneys and instructed them to apologize to the employee, and that the attorney who had engaged in the most egregious conduct was required to attend one-on-one anti-harassment training and sign a written acknowledgement that he understood and would comply with the Division's policies regarding harassment in the workplace. Additionally, Division leadership indicated that it took more general corrective measures in response to this incident, including developing a mandatory Division-wide anti-harassment training program.

E. Internet Postings by Voting Section Employees (2007)

We were told that the atmosphere in the Voting Section was especially contentious in the spring of 2007, in part because some Section employees believed Division leadership had politicized the Section's work and had acted in a manner that was inconsistent with the Section's mission by, for example, preclearing the Georgia Voter ID submission, filing the Noxubee complaint to protect White citizens, and allegedly ignoring cases that would defend minority victims.[102] The politicized hiring during this period that was documented in the 2008 OIG/OPR Report added further tensions to the Voting Section. The relations between personnel in the Section 5 unit and Division leadership were particularly acrimonious at the time, largely due to the staff's resentment over the removal of the popular Voting Section Deputy Chief who had been in charge of the unit (which was perceived to be politically motivated because the Deputy was a liberal), and increasing antagonism towards the new Acting Deputy Chief.[103] Other events added to the ill will in the Voting Section, such as the incident discussed in the prior section in which Voting Section attorneys made highly offensive and inappropriate sexual and political comments concerning a Section employee in February 2007, and the changes to the procedures for Section 5 recommendation memoranda and hiring decisions

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[102] These allegations are addressed in substance in Chapter Three.

[103] The removal of this Deputy Chief is discussed in Section V.B. of this chapter.

that employees told us they believed were ideologically based, discussed elsewhere in this report.[104]

During this period, at least three career Voting Section employees posted comments on widely read liberal websites concerning Voting Section work and personnel.[105] The three employees who we were able to identify with certainty included three non-attorney employees.[106] Many of the postings, which generally appeared in the Comments section following blog entries related to the Department, included a wide array of inappropriate remarks, ranging from petty and juvenile personal attacks to highly offensive and potentially threatening statements. The comments were directed at fellow career Voting Section employees because of their conservative political views, their willingness to carry out the policies of the CRT division leadership, or their views on the Voting Rights Act. The highly offensive comments included suggestions that the parents of one former career Section attorney were Nazis, disparaging a career manager's physical appearance and guessing how he/she would look without clothing, speculation that another career manager was watching pornography in her office, and references to "Yellow Fever," in connection with allusions to marital infidelity involving two career Voting Section employees, one of whom was described as "look[ing] Asian."

We found other postings by career Voting Section employees that contained intimidating comments and statements that arguably raised the potential threat of physical violence. For instance, one of the employees wrote the following comment to an article concerning an internal Department investigation of potential misconduct by a Section manager: "Geez, reading this just makes me want to go out and choke somebody. At this point, I'd seriously consider going in tomorrow and hanging a noose in someone's office to get myself fired, but they'd probably applaud the gesture and give me a promotion for doing it...." Some postings by Section employees contained statements that could be viewed as disturbing, such as comments that monitored managers' movements in the office and described their actions.

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[104] We were informed by the Department that other career employees raised additional allegations in early 2007, regarding the atmosphere in the Voting Section, including through informal complaints to management and HR, and through formal EEO complaints.

[105] The authors of the comments used pseudonyms, but frequently identified themselves as Voting Section employees and included non-public information in their posts indicating that they were Section employees. As discussed below, two Voting Section employees admitted to the OIG that they published the comments in question.

[106] Although the OIG was able to determine that at least three employees posted comments, many other posts which likewise contained non-public information and an undeniable familiarity with the Section's personnel and operations strongly suggest that other Voting Section employees posted comments as well. The OIG was unable to establish the identity of other commenters, however, to the same level of certainty.

In addition, we found postings by Section employees that contained heated political and even racist commentary, frequently attacking Republicans, particularly administration officials, and those Democrats who were perceived to support the Republican administration in order to promote their own careers. Multiple comments asserted that administration officials or Voting Section managers who implemented their policies were bigoted against Blacks or other racial minorities, and one used the expression "po' Niggrahs" in describing a manager's attitude toward Blacks. In one posting, one of the employees that we identified characterized the ideal neighborhood of one reportedly conservative career Section attorney as "everyone wears a white sheet, the darkies say 'yes'm,' and equal rights for all are the real 'land of make believe.'" Several posts by Section employees criticized the administration's enforcement priorities, particularly the Voting Section's decision to sue Black defendants in Noxubee, Mississippi. Another post by a career Section employee asserted that "a good, ethical Republican" is a "seeming oxymoron."

Our review also established that Section employees posted non-public information about sensitive personal matters relating to perceived Republican or conservative career Voting Section attorneys and career Voting Section managers who implemented Division leadership's priorities. For instance, career Section employees posted information about ongoing internal investigations by OPR and the OIG, and confidential personal information, such as EEO complaints and internal disciplinary proceedings. The posts also contained mocking and taunting statements toward political appointees in the Division, perceived conservative career attorneys in the Voting Section, and the career Voting Section managers appointed by Division leadership. Some of the comments were posted by Section employees while the employees were at work using their government computers.

As noted, the OIG found that at least three career Voting Section employees posted objectionable comments. Two of the three employees eventually admitted to us that they commented on the websites, stating that they posted the messages for a variety of reasons, including "blow[ing] off steam" about their frustrations regarding the Section, embarrassing certain Voting Section managers (particularly Tanner and the new Acting Deputy Chief who supervised the Section 5 unit), calling attention to perceived mismanagement and abuses by Voting Section management, and ultimately for the purpose of getting Tanner and the new Acting Deputy Chief removed from their positions.[107] Indeed, the frequency of the postings peaked in late 2007

[107] The third individual we identified is no longer employed by the Department and was unavailable to be interviewed. Overwhelming evidence established that he had posted on Internet sites concerning Voting Section matters, including testimony by multiple witnesses who told the OIG that this former employee unequivocally claimed credit for posting comments on multiple websites under a particular pen name. In fact, one of the two employees who admitted posting comments called the third employee the "ring-leader" of their "cyber-gang."

and largely dissipated following the announcement of Tanner's resignation in December 2007.

Karen Lorrie, a non-attorney employee in the Voting Section, initially denied under oath to us that she had posted comments to websites concerning Voting Section personnel or matters.[108] Later in her second OIG interview she admitted that she had posted such comments, identified several of the statements that she had posted, and acknowledged that she had lied under oath in her first OIG interview. She also told the OIG that she understood that the comments she had posted would remain on the Internet and follow the targets in the future. Lorrie told the OIG that she posted comments online as a way of "relieving the never-ending stress on the job." Lorrie stated that she believed Section management, particularly the Acting Deputy Chief of the Section 5 unit at that time, had created "severely oppressive atmosphere" and "an atmosphere of fear and retaliation day in and day out." Lorrie also cited to the February 2007 incident in which she was the target of harassing comments, which we discussed in the prior section. According to Lorrie, she sought to address those problems through Section and Division management and other official channels, but she believed nothing was being done to redress them.[109] As a result, she stated, she posted comments to vent her frustrations and as "a last ditch call for help." Lorrie stated that she did not regret posting comments online, except to the extent that it resulted in questioning from the OIG.

The second individual who admitted to the Internet postings was Gerald Crenshaw, another non-attorney employee in the Voting Section.[110] Crenshaw stated that he and other employees constituted a "cyber-gang" that was engaged in "cyber-bullying." He told the OIG that, for his Internet postings, he selected as his alias the name of the protagonist of a well-known novel because he represented "the archetype angry black guy." According to Crenshaw, he understood that the character had killed at least one person in the novel and stated that the fact that others who were familiar with the character might be afraid of the name could have played a "small part" in his selection of that pseudonym. Crenshaw, who admitted posting the comment quoted above mentioning choking someone and placing a noose in a Section office, told the OIG that he understood how posting such a comment under the character's name could be threatening and intimidating, but stated his comments were not intended to be serious and were not directed at anyone in particular. Crenshaw further told the OIG that, while he did not regret posting the

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[108] Karen Lorrie is a pseudonym.

[109] As noted above, the Section counseled all three attorneys and required them to apologize, and took additional steps with respect to one of them.

[110] Gerald Crenshaw is a pseudonym.

comments, he "should've made a better choice of words" on some of them. In particular, he stated that he believed several of his statements "crossed the line" because they included "racist" and "intimidat[ing]" language.

Crenshaw stated further that his direct non-attorney supervisor, Harley Pross, knew that he was posting comments concerning career Voting Section employees on Internet sites shortly after he started doing so, adding that he believed his supervisor was "probably" aware of his post regarding leaving a noose in the office and his purported desire to choke someone.[111] According to the Crenshaw, Pross was "indifferent" toward his postings, talked about them with other Section employees, and did not discourage him from such conduct. In fact, in one e-mail exchange with Pross, Crenshaw made a direct reference to his pseudonym and joked about Pross hiding his identity from Voting Section management, to which Pross responded favorably.

Pross told the OIG that he was aware of his subordinate's Internet postings about other career Section employees and that he had indeed prodded him to continue posting comments, even after a more senior Section manager had counseled the employee against posting similar comments in the future. Pross admitted to the OIG that condoning his subordinate's actions and encouraging further postings was inappropriate.

According to several Voting Section employees, the Internet postings described above had a negative impact on their performance and created considerable anxiety, including concerns for their personal safety. For instance, one frequent target of the blog comments told the OIG that he feared physical violence due to the vitriolic nature of the postings. Another of the primary targets of the comments contacted the Department's Security and Emergency Planning Staff out of concerns about physical violence following the posting of the comment about the noose and the desire to choke someone.

Witnesses told the OIG that some former Voting Section personnel stated that they left the Section or requested a detail out of the Division at least in part due to the Internet postings. In addition, career Voting Section attorneys told the OIG that the blogging created a chilling effect – namely, that they were hesitant to work on perceived non-traditional matters, such as reverse-discrimination cases – or that they became more cautious when speaking with other Section employees out of fear that they would be attacked on the Internet. The employees who were mentioned in these Internet postings told the OIG that they were concerned about the impact of the postings on their future employment prospects.

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[111] Harley Pross is a pseudonym. According to the Department, Pross was an administrative supervisor and was not a part of the Voting Section's management team.

Although many Section employees told the OIG that the postings had a negative impact on the Section, two current career Voting Section attorneys stated that they viewed the comments favorably. One of those two Section attorneys, who was a trial attorney at the time and has since been promoted to the position of Section manager, described the blogging to the OIG as "cathartic" because he believed the comments shed light on how the Section was being managed at that time. The other attorney, who is a trial attorney, stated that he believed the postings by one particular Section employee – whose comments were regularly identified by Section employees as the most caustic among the prominent posters – were "witty" and "largely fair and accurate." We also found that one Voting Section employee wrote e-mails to several current and former Voting Section employees, celebrating the blog postings.

Several Voting Section employees complained to Voting Section managers or CRT Division leadership about the blog postings. Division leadership told us that they contemplated addressing the postings and consulted with CRT human resources, ethics, and EEO officials about possible courses of action.

The only response by the Division concerning the Internet postings was an e-mail from Principal Deputy Chief Christopher Coates, which had been drafted by the Division's Employment Section, to the employee (Crenshaw) who had written the post mentioning a noose and other comments containing racist and offensive language. In that e-mail, Coates stated that he recognized Crenshaw's right to express his opinions, but counseled Crenshaw to refrain from using racially offensive language and making statements that created an implication of intimidation or a disruption of the workplace.

Despite the admonition from Coates, the very next day Crenshaw's supervisor, Harley Pross, told Crenshaw in an e-mail that Coates's e-mail was simply a "scare tactic," Crenshaw's job was not in jeopardy, and the Internet posting would not affect Crenshaw's performance evaluation at all. Crenshaw told the OIG that, even after receiving Coates's e-mail, he continued to post comments on the Internet, including statements that mocked the e-mail itself and speculated that a career Section manager was watching pornography at work. Pross told the OIG that he was aware of these postings and that in fact he had encouraged Crenshaw to post additional comments even after management's counseling e-mail.

Division leadership did not take additional action with respect to the blog posts because they were unable to identify with certainty who was posting the comments, were concerned about the appearance of the Civil Rights Division seemingly spying on its own employees, and were apprehensive about implicating the employees' First Amendment rights.[112] As a result, beyond the

[112] In its comments to the OIG's draft report, the Department noted several additional factors regarding the Division's ability to address the Internet postings, including: (1) the vast

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e-mail admonition to Crenshaw, no meaningful action was taken to identify the individuals responsible for the offensive postings or to address the conduct.

Lorrie and Crenshaw, the two employees who admitted to the OIG that they had posted inappropriate Internet comments, remain employed in the Section. As noted above, the third employee who we determined posted inappropriate comments is no longer employed by the Department. Pross (Crenshaw's supervisor who encouraged him to continue this activity) is no longer employed by the Department.

F. Ostracism of Career Employees

Several career Voting Section attorneys told the OIG that they and other employees were subjected to pervasive mistreatment by other career Voting Section employees due to their conservative political views or their work on particular Section matters. We described above the examples most commonly cited to us of this mistreatment – namely, the "whisper campaign" about the student intern who worked on the Noxubee trial, the improper behavior of the original Georgia Voter ID review team towards Arnold Everett, and the inappropriate postings on Internet websites about self-identified or perceived conservative employees, Section managers, and Division leadership. Beyond these incidents, witnesses cited to the OIG other instances of alleged mistreatment.

For example, several career attorneys noted that some of the purportedly liberal career Voting Section employees would ostracize conservatives in the office, exclude them from meetings on cases or matters, or make derogatory comments about their involvement in cases. At least two witnesses who identified themselves as conservatives told the OIG that, when they worked on controversial matters, attorneys who were perceived to be liberal would interrogate them about the matters and exert significant pressure on them to arrive at conclusions that fell in line with traditionally liberal views. Several conservative Section personnel told the OIG that, soon after they joined the Section, perceived liberal employees questioned them in a persistent manner about political issues and their views on civil rights matters, which they believed were thinly veiled attempts to determine the employees' political ideology.

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majority of the Internet postings were made outside of work hours and, presumably, from personal computers; (2) pursuant to DOJ Order 2740.1A, the Division may not search the Internet activities of its employees on their government computers, even to investigate possible misconduct, absent approval from the Justice Management Division (JMD); (3) CRT sought guidance from JMD about available options for addressing the Internet comments in light of that DOJ Order 2740.1A and concerns about the First Amendment implications; and (4) CRT followed JMD's advice, including the decision to counsel Crenshaw.

The conduct manifested itself in petty ways as well. For instance, when one well-known conservative attorney was leaving the Section, another employee wrote on his commemorative Department seal: "Bad Luck." Years later, when Chris Coates was preparing to leave the Section and his commemorative seal was available for signatures (a long-standing tradition for departing Department employees), a conservative Section employee hid the seal out of fear that it would be "vandalized."

Several Voting Section employees told the OIG that the mistreatment of one group of career employees by another group of career employees because of their perceived ideology or political beliefs had a detrimental impact on the work environment in the Voting Section. For instance, employees stated that the harassment had a chilling effect in which they would not discuss their personal beliefs or their views on Section work with others in the office, out of fear that they would be isolated, mocked on the Internet, or mistreated in other ways.

G. Actions To Address and Prevent Harassment

According to the Department, in April 2007, in direct response to complaints about harassment in the Voting Section Division leadership began the process for developing a mandatory Division-wide anti-harassment training program. In September 2007, the Division held mandatory anti-harassment training for all CRT managers and employees. That training focused on maintaining a respectful workplace and preventing harassment, including race-based harassment, and provided information about the EEO complaint process. According to CRT records, this was the first anti-harassment training held by the Division. The Division also posted its EEO and harassment policies, including complaint procedures, on the Intranet in 2007. In June 2007, AAG Wan Kim issued a memo to all employees reiterating that CRT is an equal employment opportunity employer and discrimination will not be tolerated.

The Department has described additional steps taken by Division leadership under the current administration to prevent inappropriate or harassing conduct, including: providing annual EEO and anti-harassment training to all employees and managers; issuing EEO, prohibited personnel practice and anti-harassment policies that are available to all employees on the CRT Intranet and that set forth the various procedures for reporting misconduct; and sending periodic reminders to all employees about their obligations to conduct themselves in a professional matter at all times. In January 2011, for instance, AAG Perez reiterated to all CRT employees – via posting on the CRT Intranet page and via e-mail message to all CRT employees – the prohibitions against discrimination and harassment in the workplace, including specific language that "[a]ll employees must conduct themselves in a professional manner at all times and refrain from engaging in conduct that

may be viewed as hostile or offensive to others in the workplace, including making derogatory comments about other employees because of their membership in a protected category, such as race, sex or religion, or because of their actual or perceived political affiliation."

H. Conclusions about Harassment

We found that numerous career Voting Section employees engaged in highly inappropriate and hostile conduct toward other career Section employees.

In the Georgia Voter ID matter, we believe it was problematic to add an inexperienced attorney to the case team because of his perceived ideology and that of the other members of the team. This assignment, and the subsequent direct communications between Division leadership and the inexperienced attorney, created the perception among other team members that the attorney had been placed on the team for political or ideological reasons. However, these circumstances did not excuse the conduct that followed. The new attorney was ostracized and ridiculed, and had his work product copied from his computer files and distributed without his knowledge or permission, at least in part because of the perception that he was conservative and because of the legal positions he advocated while working on the submission. In the Noxubee matter, a student intern and his mother were subjected to offensive questions and racially motivated comments due to his willingness to assist in a Section 2 case against Black defendants, and Coates was the subject of abusive and inappropriate e-mail comments. In the County D matter, conflict between two attorneys erupted into a shouting match in which one attorney's perceived conservative affiliation was highlighted.

In 2007, antagonism within the Section fed a series of Internet postings by Section employees, containing a wide array of highly inappropriate remarks ranging from petty and juvenile personal attacks to racist and potentially threatening statements. Some of the comments were posted from work computers, which we believe constituted a misuse of office resources and reflected extremely poor judgment. Likewise, some of the Internet postings contained non-public information about internal Department matters, generally personnel and disciplinary issues, which reflect exceptionally poor judgment and may have constituted a violation of federal regulations or Department policies.[113] We are especially troubled that a non-attorney Voting Section supervisor, who knew of a subordinate's improper conduct, not only suggested that the employee disregard counseling and admonishment from

[113] *See, e.g.*, 5 C.F.R. § 2635.703, which prohibits the use of nonpublic information by government employees to further the "private interests" of himself or others. Example 5 in the regulation makes clear that "private interests" need not be monetary, and that disclosing nonpublic information for political or ideological reasons may also be prohibited.

Division leadership, but also encouraged the subordinate to continue the improper conduct.

We also are troubled by the failure of Division leadership to take meaningful action to address some of these issues at the time they arose. The willingness of career Section employees to post highly inappropriate and even racist comments on the Internet, in some instances with their identities only thinly disguised and in one instance with the support and encouragement of a supervisor, was indicative of a lack of concern that they might be subjected to discipline by the Division or the Department. Together with other incidents described in this chapter, it reflected a culture of intolerance that existed in the Voting Section. Particularly given that some of the employees involved in this behavior remain in the Voting Section, we believe that current Division leadership must be vigilant in expeditiously responding to and addressing future incidents of this nature.

III. Disclosures by Voting Section Employees of Non-Public Voting Section Information

Another category of conduct that we learned about during this review that contributed to partisan rancor within the Voting Section was the disclosure of confidential or deliberative information for publication by a third party. Determining the source of these disclosures – some of which occurred as long as 10 years ago – was beyond the scope of this review. Nevertheless, in most cases it was apparent that a voting Section employee was the most likely source of the information based upon its content or statements in the publication. This conduct, which occurred in the Voting Section with a frequency that is not typical for a Department component, exacerbated ideological conflicts within the Voting Section and between career employees and Division leadership.

For example, in February 2002, the Department received inquiries from a reporter who had obtained information about the contents of an internal Voting Section memorandum regarding the controversial Mississippi Section 5 submission (discussed in Chapter Three). Division leadership suggested to Section Chief Joseph Rich that this disclosure likely came from career staff in the Voting Section, which Rich disputed. Soon after, an article was published stating that political appointees had rejected career lawyers' recommendation in the Mississippi matter.[114]

[114] Ellen Nakashima and Thomas Edsall, "Ashcroft Personnel Moves Irk Career Justice Lawyers," *The Washington Post* (March 15, 2002).

On another occasion, in November 2005, an article was published describing the contents of the internal memorandum submitted by those members of the review team who had recommended an objection to the Georgia Voter ID law (discussed in Section IV.B. of Chapter Three), and reporting that the review team's recommendation had been "overruled the next day by higher-ranking officials at [the] Justice [Department]."[115] This disclosure fueled allegations that the decision to reject the staff memorandum and pre-clear the Georgia law was politically motivated. One member of the review team told us that he had forwarded the memorandum to numerous other employees so that Division leadership could not accuse the review team of being responsible for any subsequent leak of the memorandum.

Shortly thereafter, in December 2005, the Section's career staff memorandum recommending an objection to the Texas redistricting plan (discussed in Chapter Three) was the basis for an article describing the incident as "another example of conflict between political employees and many of the division's career employees."[116]

More recently, in 2011, the following statement appeared in a political blog on the Internet:

> Justice Department sources familiar with Voting Section tactics tell me that DOJ has been sending investigators wearing wires and electronic surveillance equipment into state welfare and food stamp offices across the country to see if state officials are pushing voter registration on investigators posing as recipients. They have stung Louisiana, Georgia, Rhode Island, and potentially more states with these tactics.[117]

In 2012, the National Review Online Internet site described the contents of two purported internal Civil Rights Division reports and quoted at length from a purported internal Voting Section memorandum recommending preclearance of certain voting changes under Section 5.[118]

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[115] Dan Eggen, "Criticism of Voting Law Was Overruled, *The Washington Post* (Nov. 17, 2005).

[116] Dan Eggen, "Justice Staff Saw Texas Districting as Illegal," http://www.washingtonpost.com/wp-dyn/content/article/2005/12/01/AR2005120101927.html (accessed March 8, 2013).

[117] Christian Adams, "Millions of Dead Voters, Brought to You By Eric Holder," PJ Media, February 14, 2012, http://pjmedia.com/jchristianadams/2012/02/14/millions-of-dead-voters-brought-to-you-by-eric-holder/?singlepage=true (accessed March 8, 2013).

[118] Hans A. von Spakovsky, "Crooked Justice," http://www.nationalreview.com/articles/334688/crooked-justice-hans-von-spakovsky# (accessed March 8, 2013).

In the course of our review, we also learned about the efforts of an outside attorney, who was a former Voting Section manager, to obtain internal Voting Section documents. In 2008, a Voting Section non-attorney employee provided information to this outside counsel about the legal reasoning of Section attorneys underlying the remedy that the Voting Section proposed in a Section 2 vote-dilution case. This same outside counsel, in 2003, had sought a copy of the Voting Section career staff's recommendation memorandum relating to the review of Texas's congressional redistricting submission (discussed in Chapter Three). We found that the outside counsel unsuccessfully attempted to obtain the 2003 memorandum from at least three Section attorneys, a Section analyst, and a Deputy Section Chief.

We were told by three witnesses that the outside counsel's attempt to obtain the memorandum in 2003 failed after the outside counsel stated to Section employees, in substance, that the document had substantial monetary value. One of the Section attorneys whom the outside counsel approached told the OIG that the outside counsel's request seemed "kind of offensive." This Section attorney stated further that, although the outside counsel's comment had a "sort of corrupt tinge," the Section attorney did not report the incident to any supervisors. Another Section attorney that the outside counsel approached for the memorandum told the OIG that she was not sure whether the outside counsel's comment was a joke, but that she was shocked and scared by the comment and she promptly ended their meeting. She told the OIG that although she believed his comment was improper, she did not report the incident to her supervisors because she had no further discussion with him about it, she was scared at the time, and she did not want "to get in the eye of any storm."

Although the outside counsel did not obtain the memorandum, he indicated in subsequent filings regarding the case that he had learned from "sources inside the Department of Justice" that career staff had recommended that the Department object to the Texas redistricting plan, which was not public information at that time. In our interview of the outside counsel, the counsel stated that he did not offer any money for the memorandum, though he acknowledged in written comments responding to this portion of the report that he did tell Section employees that the memo would have substantial value in pending litigation. In his interview, he further indicated that he tried to obtain a copy of the memorandum because he wanted to "show that the voting rights of minorities had been violated and that the Section 5 process would have protected them, but [that] instead [the career staff's recommendation] was overruled [by the Bush administration]."

We also found incidents in which Voting Section career staff shared confidential Section information with outside civil rights attorneys, some of whom were working on matters where they were adverse to the Department. For example, in 2005, a Voting Section attorney sent an internal "weekly

report," which provided the Section's staff with case status updates, to a civil rights attorney who used to work in the Section and was representing clients in private practice on voting matters.[119] The weekly report included arguably attorney-client-privileged and confidential work-product information, including summaries of three matters in which the Department had notified jurisdictions that the Department was planning to file complaints in the immediate future (including the allegations that would be asserted in the respective complaints), a description of a meeting between Voting Section attorneys and jurisdiction officials concerning a Section 5 submission, and a summary of a telephone conference concerning discovery matters between Voting Section attorneys and defense counsel in the ongoing Noxubee litigation.

Division leadership indicated to us that it has taken a variety of steps to address the improper disclosure of confidential information and remind employees of their obligations.[120] Several CRT leadership and Section managers told us that the unauthorized release of confidential information about internal Voting Section deliberations negatively affected their ability to manage the Voting Section and was bad for morale. Additionally, CRT and Section managers told the OIG that their concerns about unauthorized disclosures of confidential information resulted in management sharing less information with the career staff regarding Section matters.

IV. Allegations of Retaliation by Managers against Career Employees

In this section we address allegations that managers in the Civil Rights Division and in the Voting Section took actions against career employees because of their political views or positions they took in controversial cases.

The OIG received a large number of allegations in this category. For example, some witnesses told us that they or other employees had received adverse comments or ratings in their performance assessments or had been

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[119] The Voting Section attorney has since left the Department.

[120] In December 2005, AAG Wan Kim reported several unauthorized disclosures of privileged and confidential internal documents from the Voting Section to the OIG and to OPR. Kim's request was referred to the Office of the Deputy Attorney General, which declined to initiate a leak investigation. More recently, on December 14, 2012, CRT leadership, after consulting with JMD General Counsel, issued an e-mail to all CRT staff with the subject line: "Responsibilities of CRT Employees to Maintain the Confidentiality of Internal Division Documents and Information." That e-mail "reiterate[d] to all Division employees their responsibility to maintain the confidentiality of internal Division documents and information," and listed the Department rules and practices that require the confidentiality of internal documents and information. Similar memoranda were issued by Division leadership in prior administrations.

unfairly deprived of bonuses or awards because of their ideologies or political affiliations. Some attorneys complained that they received undesirable case assignments or that Division leadership refused to approve cases that they proposed for investigation or filing because of political or ideological bias. We even received an allegation that one career employee was given a less desirable office because of his or her perceived political affiliation. We received these types of allegations with respect to both the current administration (employees alleging they were mistreated because they were conservatives or Republicans) as well as the prior administration (employees complaining they were mistreated because they were liberals or Democrats).

In our prior investigation of improper hiring and other improper personnel actions in the Civil Rights Division, we concluded that former Deputy Assistant Attorney General Bradley Schlozman explicitly stated his desire to remove attorneys from the Voting Section because of their political views. As we outlined in our earlier report, as part of an e-mail exchange with a former colleague in 2003, Schlozman described Voting Section attorneys as "mold spores" and wrote, "My tentative plans are to gerrymander all of those crazy libs right out of the section." We determined that the Voting Section was typically staffed with approximately 35 attorneys at the time, and that a total of 20 attorneys left the Section during Schlozman's tenure. Our prior report did not include an investigation of the reasons for the departure of each individual attorney during that period.

We found it impractical in this review to investigate most of the allegations of political discrimination in the treatment of career attorneys due to the passage of time and the nature of the evidence we would have needed to examine. For example, in order to determine whether performance reviews were based on the merits or tainted by ideological bias, the OIG would have had to evaluate the performance of a large number of employees over a lengthy period in the past and then compare each employee's performance with the comments and ratings in each employee's annual assessment.[121]

However, we identified three incidents or allegations of Voting Section management mistreatment of career employees for ideological reasons that were sufficiently discrete and for which relevant evidence was sufficiently

[121] An additional complicating factor in reviewing these allegations was the fact that some disagreements between employees and managers over positions advocated in Voting Section cases may raise legitimate issues of performance. If an employee's ideology results in resistance or obstruction of legitimate management priorities, or advocating for positions in cases that are not adequately supported by fact or law, this could be a performance issue justifying a critical performance assessment. Distinguishing between such performance issues and purely ideological disputes with respect to incidents that occurred years ago would have been very difficult, particularly with respect to some voting rights matters for which the applicable case law provided highly flexible or subjective standards.

available to enable us to investigate them. First, several witnesses told us they believed that in 2005 and 2006 then-Section Chief John Tanner assigned certain work from the Civil Division's Office of Immigration Litigation (OIL) – which many employees found to be an undesirable assignment – to Voting Section attorneys on the basis of their perceived partisan or ideological affiliations. Second, witnesses told us that they believed Tanner retaliated against career employees who recommended that the Voting Section interpose a Section 5 objection to the Georgia Voter ID law (discussed in Chapter Three and in Section II.A of this chapter) in their performance assessments because they took a position contrary to the wishes of political appointees in the Division, and that these employees were driven out of the Voting Section as a result of Tanner's actions. Third, we received an allegation that in 2009 DAAG Julie Fernandes explored removing a career Voting Section employee from a Division hiring committee because of the employee's political views. We examine each of these matters in turn below.

A. Assignment of OIL Briefs (2005-06)

In late 2004, a backlog of tens of thousands of immigration appeals had swamped OIL. As a result, the Department issued a directive that attorneys in other Department components, including CRT, were expected to work on OIL matters in order to reduce the backlog.

From September 2005 through May 2007, the Voting Section received approximately 17 OIL cases, which Section Chief John Tanner assigned to approximately 10 different attorneys. At least eight current and former Voting Section attorneys, including some widely perceived to be conservatives, told the OIG that they believed Tanner targeted the OIL briefs to specific attorneys who he did not like personally or who disagreed with him or Division leadership on cases, and used the assignments to drive those disfavored attorneys out of the Section.[122]

Tanner assigned at least 6 of the approximately 17 OIL briefs to perceived conservative Section attorneys, including 2 attorneys who volunteered for the assignments. The remaining approximately 11 matters were assigned to a handful of perceived liberal Section attorneys.[123] Tanner

[122] Tanner is no longer employed by the Department and declined to be interviewed by the OIG for this investigation. Tanner was interviewed by the OIG in 2007 in connection with its investigation into Civil Rights Division personnel actions and in 2006 and 2007 in connection with another review, but these interviews did not include an in-depth exploration of the personnel decisions discussed here.

[123] An exact accounting was not feasible because we found no centralized records regarding these assignments and because some briefs were reassigned to multiple attorneys within the Section. We pieced together the available evidence to construct the estimates given in the text.

directed 6 of those approximately 11 OIL cases to Pat Tellson, who was, according to many Section employees, a well-known and outspoken liberal. Tellson was assigned to the Section 5 unit and did not typically work on litigation matters. According to an e-mail written to Tanner by the CRT coordinator of the OIL assignments, Tellson was given "more [OIL assignments] than anyone else in any trial section." Tellson told us that she believes the OIL assignments were harassment and punitive.

Tanner issued multiple OIL assignments to three other perceived liberal Section attorneys. One of those attorneys had vigorously disagreed with Tanner on the 2005 Georgia Voter ID matter, while another of the attorneys had clashed with Tanner on an ethics-related concern. Tanner assigned an OIL case to another perceived liberal Section attorney who worked in the Section 5 unit, but she requested that the matter be reassigned due to her stated moral objections to such immigration appeals, which Tanner agreed to do.

Certain incidents involving Tanner bolstered the impression among Section personnel that he assigned OIL briefs in a punitive manner. For instance, one Section attorney told the OIG that Tanner told her on her first day at the Voting Section that, if she "behaved herself," he would try to shield her from OIL assignments. The attorney further stated that she believed Tanner's comment was a threat. However, this attorney was not perceived to be liberal, and there is no evidence that Tanner was referring to ideological or partisan considerations when he made this comment. In another instance, Tanner reassigned an OIL brief at the request of a Section attorney who was perceived to be conservative and gave the matter to another attorney who was perceived to be liberal and with whom he had clashed on a high-profile case.

Although Tanner did not appear to have distributed the OIL brief assignments in an equitable manner, with nearly two-thirds being assigned to perceived liberal attorneys, we ultimately did not find sufficient evidence to conclude that he made the assignments on the basis of ideology. We did not find evidence in our review of Tanner's e-mails to indicate that there was an ideological basis for his decision-making in assigning these briefs. Rather, a handful of his contemporaneous e-mails suggested there were non-ideological reasons for his assignments. For example, in an e-mail to the CRT coordinator of OIL assignments (who worked in a different Section of CRT), Tanner stated that he had chosen Tellson to be the "primary specialist" for the Section on OIL cases, citing the CRT coordinator's previous advice to Tanner that attorneys prepare OIL briefs more quickly as they gain experience with them and noting that the CRT coordinator indicated that attorneys in his section handled six such cases simultaneously. Tanner's e-mail also noted that the Voting Section had an "extraordinarily heavy and time-sensitive caseload" at the time and that "everyone else [is] up to their ears" on cases involving the Help America Vote Act. In addition, when Tellson complained to Tanner that the burden of writing

the OIL briefs was impeding her ability to complete her Section 5 work and exacerbating a shoulder injury from "excessive use of the [computer] mouse," Tanner told her that he had not realized that it had become a problem and agreed to stop assigning her OIL briefs, at least temporarily.

Additionally, we noted that one of Tanner's first OIL assignments was to a perceived conservative Section attorney that Tanner seemed to regard highly, and Tanner subsequently assigned at least one OIL brief to a perceived conservative Section attorney that he had nominated for a performance award. Likewise, although Tanner assigned more OIL briefs to perceived liberal attorneys, based on what we were told by interviewees during our review, it appeared that there were more attorneys in the Voting Section at the time (and all other times relevant to this review) who were perceived to be liberal than were perceived to be conservative. Taking all of the evidence together, we did not find sufficient basis to conclude that Tanner used the OIL brief assignments as a means to retaliate against career employees for their partisan affiliations or because of positions they had previously taken in controversial cases.

B. Alleged Retaliation against Certain Members of the Georgia Voter ID Team (2005)

Several current and former Voting Section employees told the OIG that they believed Tanner retaliated against the three review team members who recommended that the Section object to the Georgia Voter ID Section 5 submission discussed above in Section II.A. of this chapter and in Chapter Three. All three left the Voting Section within 14 months after the conclusion of the Georgia Voter ID matter. Several witnesses told us they believed that these three employees were ultimately forced out of the Section because of the positions they took in the Georgia Voter ID review.

We learned that all three employees were reprimanded by Tanner in meetings held in September 2005. The three employees told us that a significant focus of the admonishment was the way the team had treated Arnold Everett, the attorney who had been assigned to the team by Division leadership and who had recommended preclearance. Two members stated that Tanner also criticized their substantive performance on the review, but that his criticisms were not specific.

Section management, at Tanner's request, inserted a negative comment concerning the Georgia matter into the annual performance evaluation score of the analyst who worked on that submission, but made other positive comments about the analyst's work. The analyst received a lower overall performance score than in the prior year. The other two members of the team who recommended an objection – an analyst and an attorney – left the Section before their performance evaluations were prepared. By contrast, Division

leadership gave Arnold Everett, the review team member who recommended preclearance, a performance award for his work on the matter.

Although Tanner declined to be interviewed for this review, he has discussed some of these issues in other contexts. In an interview in another review and in an e-mail to Division leadership, Tanner identified several specific problems with the team members' data analysis, stating that he believed their analysis was biased, repeatedly omitted key facts, skewed relevant data, and had to be "jettisoned" because it could not be replicated. In addition, in response to questions that the Division leadership received from a reporter asserting that Tanner had retaliated against those employees, Tanner told the Division's leadership:

> There were no reprisals against any staff . . . . Where there is room for improvement in the performance of federal employees, any good manager will point it out and offer opportunities [for] training or other improvement of performance. Telling someone that [their] work needs improvement and offering them guidance on improvement does not constitute reprisal.

We interviewed all three employees about the reasons for their departure. The employee who was an attorney told us that she had long planned to leave the Voting Section because she wanted more professional development, including trial experience, than she was getting in the Voting Section. She said she had applied for the job that she later accepted before the Georgia Voter ID matter happened, and that she did not leave because of the case. The second employee was more uncertain about the reason for his departure, telling us that he did not know whether the Georgia matter caused him to leave. He also said that his work in the Section was cyclical and he knew it would wane in 2006, and that this was a factor in his departure. The third employee told us that she left when managers would not agree to let her switch from full-time to part-time status. We did not find evidence that her managers refused this request in an effort to get her to leave the Section. We also did not find evidence in the e-mails we reviewed indicating that Tanner was attempting to force the three employees to leave the Section. Taking all of the evidence into account, we did not find sufficient evidence to support the widely-held perception among Voting Section employees that the three Section employees who advocated an objection to the Georgia Voter ID law were forced out of the section.

Finally, as to Tanner's oral admonishment of the three employees at the conclusion of the Georgia Voter ID matter for their treatment of Everett and for their substantive work on the case, as noted above we found that the treatment

of Everett by these employees was indeed inappropriate in several instances.[124] We further found no basis to conclude that the Tanner's negative comment in the performance assessment for one of the employees and reduction in the employee's overall rating from the previous year was in retaliation for any positions the employee took in the Georgia matter.

C. Consideration of Ideology in the Composition of the Honors Program Hiring Committee (2009)

In late August and early September 2009, the CRT began preparing for the annual hiring process for the Attorney General's Honors Program and Summer Law Intern Program. Pursuant to the CRT procedures established in 2008, the CRT leadership created a CRT Honors Program/Summer Law Intern Program Hiring Committee, comprising representatives from each CRT section.[125] Each section chief was responsible for appointing one or two representatives to the committee, depending on Section resources. The deadline for the Section Chiefs' appointments for the 2009 committee was August 28, 2009.

Voting Section Chief Christopher Coates was out of the office on leave when the committee appointments were due, and could not be reached. In his absence, the Acting Chief appointed career Trial Attorney Carson Poole and another long-tenured career attorney to the committee.[126] Shortly after Coates returned from leave on September 1, 2009, he replaced the other Voting Section attorney with a different career attorney, Gregory Milner.[127] Coates told the OIG that he believed both of the Voting Section's initial delegates to the committee were liberal and that Milner was conservative.[128] Coates explained that his practice regarding appointments to hiring committees and other projects was to intentionally pick a conservative and a liberal representative because he believed this was the best approach to get a broad perspective and

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[124] In making these findings, we emphasize that we did not attempt to confirm Tanner's assessment of the substantive work product generated by the employees who recommended an objection. As discussed in Chapter Three, we reviewed the positions taken by all the attorneys involved in the Georgia Voter ID matter, and did not find a basis to conclude the positions advocated in their analyses lacked support in law or fact.

[125] According to CRT human resources personnel, the Division had initiated a comprehensive review of its hiring policies before the release of the OIG's 2008 report concerning the Department's Honors and Summer Law Intern Programs and, following the release of the OIG's report, incorporated the OIG's recommendations into their policies.

[126] Carson Poole is a pseudonym.

[127] Gregory Milner is a pseudonym.

[128] We note that the replaced attorney had served on the Honors Program hiring committee the previous year at Coates's request. Coates also appointed an attorney he perceived to be ideologically conservative to that prior Honors Program hiring committee.

a diverse point of view on the subject matter at hand. Coates also stated that he believed it was important for the Voting Section to have ideological diversity because its actions affect the political process.

On September 2, 2009, Acting AAG Loretta King issued a memorandum to the CRT section chiefs reiterating the rules governing the CRT's selection process for the Attorney General's Honors Program. King's memorandum stated that the Section representatives to the hiring committee "may be members of management (Chiefs, Deputy Chiefs, or Special Litigation Counsel), or attorneys with at least five years in the Division."

On September 3, 2009, Milner and Poole received an e-mail with the upcoming committee schedule. Poole forwarded the e-mail at 4:50 pm to DAAG Julie Fernandes, alerting her to Milner's appointment on the committee and stating: "If this is not the fox guarding the henhouse, I don't know what is." Poole also stated in his e-mail that he assumed Coates replaced the original delegate with Milner and concluded: "It just continues."

Poole told the OIG that he believed Milner had worked on behalf of the Republican Party in the past and that he had viewed Milner as having a particular ideology.[129] He said that, based on Milner's previous work and his work in the Voting Section, he thought Milner might err on the side of imposing ideological requirements on certain applicants and he had a concern about Milner acting fairly on the hiring committee. When asked what he meant in stating "it just continues," Poole responded that Milner was one of the attorneys hired during the previous administration and had worked with Coates on a controversial case, and he believed that Milner's selection was an attempt by Coates to make sure that the applications were being viewed by someone who Coates viewed as "an ideological compadre."[130]

Fernandes wrote back to Poole at 8:04 pm that evening, stating: "I need to speak to [the CRT Human Resources staffing supervisor] about this." Four minutes later, at 8:08 pm, Fernandes e-mailed Acting AAG Loretta King and the Acting Chief of Staff for the Division, stating:

> I understand that Chris Coates has recommended [Poole] and [Milner] to serve on the honors hiring committee from voting. However, I also understood that you had to have a certain number

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[129] As noted later in this chapter and in Chapter Five of this report, our investigation revealed that Poole sent numerous messages on the Department's e-mail system that expressed views that were hostile to Republicans and political conservatives.

[130] The issues concerning the New Black Panther Party case and the dispute between Coates and Division management (including King) about the dismissal of certain defendants, which we discuss in detail in Chapter Three, occurred a few months earlier, in April and May 2009.

> of years in the Division in order to be on this committee and that [Milner] does not meet that qualification. Please let me know the status of this and whether we need to find a replacement for [Milner].

As noted above, King's memorandum governing the hiring committee stated that committee members must either be Section managers *or* attorneys with five years of experience in the CRT. Because Milner held a position that qualified as a Section manager, the five-year requirement did not apply to him.

At 8:52 pm that night, Poole forwarded Fernandes's 8:04 pm e-mail to Chris Herren, then a Deputy Section Chief, and stated: "[Fernandes] said to be open and let her know what's going on if it was important. Let's keep this between us."

The next morning, September 4, 2009, King responded to Fernandes's 8:08 pm e-mail concerning Milner's eligibility under the five-year requirement, saying: "This gets complicated. You should either discuss this with [a CRT leadership official] or we can discuss when you return."

It is unclear whether Fernandes or anyone else took any further action regarding Milner's appointment to the hiring committee. Fernandes told the OIG that she did not recall taking any actions with regard to Milner's selection to the committee beyond these e-mails. She stated further that she did not know whether she communicated any further with King or the other CRT leadership official about this issue. Fernandes stated that she vaguely recalled speaking with Coates about the matter, but that she "must have" discussed it with him.

Fernandes stated that she probably spoke with the Human Resources (HR) supervisor referenced in her e-mail and another administrative employee about the hiring committee, but she did not recall doing so. She also said that she did not learn about the five-year eligibility requirement until someone told her about it in connection with this incident. (As noted, even after being told about the rule, Fernandes did not understand that it was inapplicable to Section managers like Milner.) The OIG was unable to determine when or how Fernandes learned about the five-year eligibility requirement for trial attorneys. The HR supervisor referenced in Fernandes's 8:04 pm e-mail told the OIG that she did not speak with Fernandes or anyone else regarding the composition of the 2009 committee or the relevant eligibility requirements.

Furthermore, despite Poole's 8:52 pm e-mail, which appears to reference some additional communication with Fernandes, neither Fernandes nor Poole recalled in their OIG interviews any communication aside from the e-mail exchange. Poole also told the OIG that he did not know whether Fernandes took any action in response to his initial e-mail.

Fernandes told the OIG that Milner served on the committee and that she believed the issue was resolved and that her concerns were assuaged, either because Milner was eligible to serve on the committee or because Coates persuaded her that there was a good non-ideological reason for waiving the eligibility requirement in this case. Poole stated in his OIG interview that there were no problems with Milner's performance on the committee and that Milner "made some good recommendations" as a member of the committee. Furthermore, he stated that he expected that Milner was going to be reappointed to the committee for the 2010 cycle and that he no longer had any concerns about Milner's involvement on the committee. However, Milner was not reappointed to the Honors hiring committee in 2010 by new Voting Section Chief Chris Herren. (As described later in this chapter, Coates departed as Voting Section Chief in early 2010.) Milner told the OIG as of October 2011 he had been given certain administrative duties like Safe Room Coordinator and Intern Coordinator.

When asked about the meaning of the e-mail exchanges concerning Milner's appointment to the committee, Fernandes stated that she understood that Poole was concerned about Coates and the politicization of the Section and that his e-mail was likely an allusion to those concerns. Fernandes later acknowledged that she understood that Poole was raising the question because he thought Milner's appointment was due to political considerations.

Fernandes initially told the OIG that her concern was whether Milner met the eligibility requirements and whether Coates followed the rules in selecting Milner. Later, she told the OIG that her concern was whether Coates selected Milner because of his political orientation. She stated further that assessing whether the selection followed the rules was one piece of evidence in determining whether it was politically motivated.

Fernandes also initially told the OIG that she doubted that she would have raised her concern about Milner's appointment to King if she believed that he satisfied the committee eligibility requirements. Later, she added that, even if Milner had sufficient tenure in the Division, it would be improper for Coates to select him if the reason he did so was because Milner was conservative, and that this was her concern.

Fernandes stated that she knew at the time that Milner described himself as a political conservative, but she stated that Milner was not her concern. To the contrary, Fernandes stated that she believed at the time – and continues to believe – that Milner could satisfactorily fulfill his obligations on the committee and that he would do "a fine job" in that capacity. According to Fernandes, her concern was more about Coates's motivations for appointing Milner, specifically whether Coates was selecting Milner because of his political orientation. She said that she believed Coates had an "us-versus-them" mentality concerning Voting Section personnel, and that he wanted to make sure that a liberal and a

conservative served together. She stated further that there is a history of politicization in the Voting Section and in CRT, and that Coates spent time in those circles of people. She said that Coates needed to understand that they "don't roll that way." She also told the OIG that she knew of Coates's practice of assigning a liberal and a conservative for such assignments.

According to Fernandes, she knew that Coates was a conservative who she thought favored other conservatives who he believed were on "his side." She said that if Coates had appointed a known liberal to the committee rather than Milner, she would probably not have raised an objection because she would not have been concerned about politicization of the hiring process. She said that, if Coates had made a different choice and there was no reason to think that the choice was not based on anything but the merits, she would not have cared.

We believe that this incident demonstrates that problems of polarization within the Voting Section continued after the change in administrations. The participants all viewed this incident through starkly ideological lenses. Coates substituted Milner for another attorney on the hiring committee who he perceived to be "liberal," and said that it was his practice to "balance" the assignments of liberals and conservatives to projects in order to ensure a diversity of viewpoints. Poole objected to Fernandes about the assignment of Milner on the grounds that he was the "fox guarding the henhouse," a clear reference to Milner's perceived ideological views. Fernandes responded to Poole by telling him that she would look into the matter and then immediately e-mailed the Acting AAG of the Division about the appointment. Fernandes told us that she believed Coates frequently acted to advance his conservative ideological allies, and that she was concerned that he did so in this instance, even though she had no doubt about Milner's fitness for the job.

We believe that it was inappropriate to consider ideology in selecting Voting Section employees to serve or remain on committees such as the Honors Hiring Committee, even if the motive was to achieve or restore "balance." We found that the focus on ideological considerations with respect to Milner's appointment to the hiring committee was troubling considering that the OIG, together with OPR, released 3 reports concerning improper political considerations in Department hiring in the 14 months preceding these events.[131] One OIG-OPR report specifically examined improper political considerations in the Department's Honors Hiring Program, the very committee

[131] *See* OIG-OPR Report, An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program, June 2008; OIG-OPR Report, An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 2008; OIG-OPR Report, An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division, July 2008 (Released Publicly January 13, 2009).

at issue here. We believe that this incident illustrates that polarization and mistrust persisted in the Voting Section and infected even routine non-case-related decisions like the composition of a hiring committee.

V. Allegations of Removal or Marginalization of Career Section Managers by Political Staff

In this section, we examine the events surrounding the departures of three senior Voting Section managers – former Section Chief Joseph Rich, Deputy Section Chief Robert Berman, and former Section Chief Christopher Coates – which became the subject of controversy and allegations of dysfunction, misconduct, mismanagement, or inappropriate behavior.

A. Marginalization of Voting Section Chief Joseph Rich (2004-05)

1. Facts

Rich was Acting Chief of the Voting Section when the administration changed in January 2001. In the fall of 2001, shortly after being confirmed as the new AAG of the Division, Ralph Boyd selected Rich to be the permanent Section Chief. However, Rich's relationship with certain members of the Division's leadership soured over time. Rich's relationship with Bradley Schlozman, who became a DAAG in the Division in the spring of 2003, was particularly antagonistic. At the time, Schlozman was Deputy AAG and AAG Alexander Acosta (who had replaced Boyd) had given Schlozman broad authority to manage the Voting Section. Schlozman eventually transferred much of Rich's supervisory authority to others in the Voting Section. In the spring of 2005, Rich accepted an early retirement offer and left the Department. Shortly thereafter, Schlozman became Acting AAG of the Division and named Tanner Section Chief and promoted Coates to Principal Deputy Chief.

Rich told investigators that he accepted the Department's early retirement offer because he believed there was a political atmosphere in the Department, Division leadership exhibited personal hostility toward him, and his responsibilities as Chief had been reduced. We were told by several Voting Section employees that Rich was a popular chief among many career employees in the Voting Section, and that they believed Rich was marginalized because of positions he took on Voting Section matters that were contrary to the political desires of Division leadership.

Division leaders we interviewed told us that they lost confidence in Rich because they believed he often advanced a particular view influenced by his political ideology, which they thought was driven by information he received from civil rights advocacy groups. These witnesses stated further that Rich often resisted or refused taking on assignments with which he disagreed, held

pre-determined conclusions on cases and matters, and would not relay to Division leadership relevant legal or factual information that undermined those views.[132]

Over the course of our investigation, we learned about several incidents that contributed to the antagonism and distrust between Rich and Division leadership. We describe several of these below.

Mississippi Redistricting Letter: As described in detail in Chapter Three, in 2002, the Division considered a redistricting plan submitted for Section 5 preclearance by the State of Mississippi. AAG Boyd decided to issue a letter to the state to request additional information concerning the submission. Andrew Lelling, Counsel to the AAG during the Mississippi matter, told the OIG that letters of this type were usually drafted by the Voting Section and signed by the Section Chief, but that Rich refused to draft or sign the letter. Lelling said that Division leadership believed that Rich wanted to force political appointees to sign the letter in order to make it appear politically motivated. He said Rich ultimately signed the request for more information, after Division leadership personnel prepared the text and insisted that he sign the document. Boyd told us that Lelling probably asked Rich to draft the letter, and that Lelling relayed Rich's displeasure with this assignment.

Rich told us he did not refuse to prepare or sign the letter. He told us that Lelling and then-Principal DAAG Michael Wiggins asked him to sign the letter, which he told us he agreed to do despite disagreeing with their decision.

Rich's Efforts To Appeal Schlozman's Decisions: Rich acknowledged to the OIG that he tested some of Division leadership's decisions and instructions. For instance, Rich stated that, when Alex Acosta became AAG in August 2003, then-Principal DAAG Schlozman told Rich that Division leadership was modifying their previous practice of permitting the Voting Section to appeal decisions by the DAAGs to the AAG and that Rich should not appeal every decision to the new AAG. Rich said he decided to "try it out a few times" and continued to request meetings with AAG Acosta to appeal Schlozman's decisions. Rich stated that after Acosta rejected one of his appeals in a dismissive manner, he realized that such appeals were fruitless, and the Section thereafter stopped appealing Schlozman's decisions to Acosta.[133] Schlozman told us that during the period that Ralph Boyd was AAG,

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[132] We have summarized the view of Division leaders and Rich regarding each other to illustrate the level of distrust and animosity, not because we found evidence to substantiate the perceptions described here. Both sides of this dispute vigorously disputed each other's allegations.

[133] After reading a draft of this report, Rich told us there was only one instance in which he tested Schlozman's rule by asking for a meeting with Acosta. During his OIG interview, however, Rich stated there might have been "a couple of times" when he appealed

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Rich regularly appealed intermediate decisions to Boyd, which created frustrations and tensions between Schlozman and Rich. Schlozman said that when Acosta became AAG he decided he would not automatically consider all appeals from the Section Chief.

"Flexiplace" Incident: In October 2003, Division leadership decided to terminate a "flexiplace working arrangement" for a Voting Section attorney that had been established under the prior administration, in which the attorney was permitted to work full-time outside of the Section's office. This decision was communicated to Rich in a voicemail from an employee in the Division's Administrative Section. Rich stated that he understood from the message that he would get a follow-up phone call about the decision, but that he did not. Rich did not contact Division leadership about the matter. Rich did not terminate the arrangement for several months, and did so only after a Human Resources manager asked him about the matter. As a result of Rich's failure to implement the directive on a timely basis, Schlozman issued a written reprimand to him. Rich told us that he appealed the reprimand, that no action was ever taken on his appeal, and that at the time he left the Department he was told the reprimand was not official and would not be part of his personnel file. According to the Department, the Principal DAAG agreed with Rich's appeal, and the reprimand was removed from his file.

Section 2 Recommendation Memoranda: As detailed in Chapter Three, in early 2004, Rich submitted two memoranda to Division leadership in which the Voting Section recommended the authorization of separate Section 2 lawsuits against Township A and Township B. We found that the Voting Section's treatment in the two memoranda of one essential element in the relevant legal standard (whether Black voters in the school districts voted "cohesively") was inconsistent. Division leadership witnesses told the OIG that the inconsistent treatment of that element in the two memoranda contributed to Division leadership's perception that the Voting Section, under Rich's supervision, applied the relevant legal standards inconsistently in order to support preferred recommendations. We also determined that in rejecting the recommendation to sue Township A, Schlozman made inconsistent arguments and used abusive language toward Rich, stating: "Do you do any editing of these memos at all? I sometimes wonder if you are even capable of exercising supervision on these type of cases." Rich told us that Schlozman used abusive language toward him constantly and was "the most vindictive and difficult person" with whom Rich has ever worked. Rich stated that Division leadership took various actions against him resulting from "the unprecedented level of hostility toward career managers that permeated the leadership of the Civil Rights Division at that time."

Schlozman's decisions to Acosta before a third time when Acosta was so dismissive that Rich decided not to go to him anymore.

Deletion of Coates's Noxubee Recommendation: As described in Chapter Three, in February 2005 the Voting Section filed a civil action against the Noxubee County (Mississippi) Democratic Election Committee (NDEC), and its chairman, Ike Brown, alleging violations of Sections 2 and 11(b) of the Voting Rights Act. The Noxubee case was the first time the Department of Justice had ever filed a civil action against Black defendants under the VRA alleging denial or abridgment of the rights of White voters on account of race.

In May 2004, then-Special Litigation Counsel Christopher Coates submitted a draft memorandum to Rich that recommended that the Department conduct parallel criminal and civil investigations of the voting practices in Noxubee County.[134] Before forwarding Coates's memorandum to Division leadership, Rich deleted Coates's recommendation regarding an investigation of civil claims by the Voting Section. Rich told us that he informed Coates of the reasons for Rich's opposition to the civil investigation at that time. Upon learning of the deletion, Coates contacted Hans von Spakovsky – then counsel to the AAG – and sent him the omitted portion of his memorandum. Von Spakovsky, copying Schlozman, then e-mailed Rich to ask about the omission, and Rich responded that it was Department practice for civil investigations to be put on hold pending completion of criminal investigations.

Upon receiving Rich's e-mail, Schlozman sent Rich an e-mail response stating: "you WILL pursue the section 2 case, and you will initiate it immediately." Following the completion of an investigation, Coates prepared a J-Memo recommending that a Section 2 case be filed in the Noxubee matter. Rich forwarded it to Division leadership with his concurrence, and the complaint was filed in February 2005.

Schlozman told the OIG that when he discovered that Rich had deleted the recommendation portion of Coates's memorandum he became angry at Rich and that this event eroded all trust that CRT leadership had in Rich. Schlozman characterized the incident with the Noxubee memorandum as the "final straw" and that he went "apoplectic" and "screamed" at Rich over the telephone.

Rich's Authority Is Transferred to Coates and Tanner: Schlozman told the OIG that, as a consequence of his concerns and frustrations with Rich, he transferred all of Rich's supervisory authority over Section 203 and Section 2 cases to then-Special Litigation Counsels (SLCs) John Tanner and

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[134] The memorandum submitted by Coates was not a J-Memo and was entitled "Recommendation to Conduct Civil and Criminal Investigations into the Voting Practices in Noxubee County, Mississippi." In the conclusion, which Rich did not send to Division leadership, Coates made a specific recommendation to initiate an investigation into potential civil violations of the VRA resulting from election practices in Noxubee County.

Christopher Coates, respectively. Thereafter, the two SLCs had approval authority over all decisions relating to Section 2 and language-minority matters, and they reported directly to Division leadership, bypassing Rich. Schlozman and von Spakovsky told the OIG that they trusted the two SLCs, as opposed to Rich, to provide them with all the information they would need to make correct litigation decisions.

2. Analysis

We believe that Division leadership, particularly Schlozman, acted at times inappropriately or unfairly with Rich. We found that Schlozman repeatedly used intemperate and sometimes unfair rhetoric in communicating with Rich. We also found Schlozman's reaction to Rich's deletion of a staff recommendation to initiate an investigation in Noxubee to be extreme, as it is not necessarily inappropriate for a Section Chief to modify or delete staff recommendations once the Section Chief has made a final decision on what to recommend to leadership (in the absence of a practice or rule to the contrary).[135]

However, we also found that some incidents reflected conduct by Rich that undermined Division leadership's confidence in him. For instance, Rich admitted to the OIG that he tested or resisted some of the instructions from Division leadership, such as attempting to appeal decisions by DAAG Schlozman to AAG Acosta, despite being told that such appeals would no longer be routinely considered. Rich also failed to implement Division leadership's direction to terminate the "flexiplace" arrangement for a staff attorney in a timely manner. In addition, the inconsistent analyses concerning a critical element of the Section 2 legal standard in the Township A and Township B recommendation memoranda in 2004 undermined Division leadership's confidence in Rich's management and legal judgment. On the basis of these incidents, we found that at least some of the reason the Division leadership marginalized Rich was that it had lost confidence in Rich's willingness to implement legitimate management decisions and priorities promptly.[136]

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[135] We note that Schlozman later approved Section Chief John Tanner's modifications to the procedures for submitting recommendations in Section 5 preclearance reviews in connection with the Georgia matter, whereby dissenting staff recommendations were henceforth excluded from the memorandum conveying the Voting Section's views to Division leadership. We believe that whatever practice is chosen for dealing with situations in which there is disagreement between the Section Chief and the career staff, the practice should be communicated clearly and implemented consistently from case to case.

[136] In light of the conflicting testimony about whether Rich refused to sign the Mississippi redistricting letter, and the fact that this incident occurred prior to Schlozman's tenure in the Division, we did not conclude that this incident contributed to the poor relationship between Rich and Schlozman.

Taking all of the evidence together, we concluded that Rich and his supervisors both contributed to the antagonistic relationship between them. However, in the absence of evidence more specifically linking Schlozman's treatment of Rich to Rich's perceived ideological views, we did not find sufficient evidence to conclude that partisanship or ideology were the primary factors in the Division leadership's treatment of Rich.

B. Involuntary Reassignment of Voting Section Deputy Chief Robert Berman (2006)

In this section, we review the circumstances surrounding the involuntary transfer of Voting Section Deputy Chief Robert Berman out of the Section in early 2006 and allegations that he was reassigned for ideological reasons.

1. Facts

Berman joined the Civil Rights Division under the Honors Program in July 1978 and was promoted by Joseph Rich to the position of Deputy Chief of the Voting Section in October 2001, with responsibility for the Section 5 unit. Berman entered the Department Senior Executive Service Candidate Development Program in 2004. Pursuant to that program, Berman served on a 5-month detail to the Administrative Office of the U.S. Courts starting in September 2005, at which point John Tanner was the Section Chief.

During Berman's detail, Tanner placed Special Litigation Counsel Yvette Rivera as Acting Deputy Chief in charge of the Section 5 unit and asked her to review how the Section 5 unit was doing its work. According to Rivera and Tanner, Rivera identified several problems relating to management and workflow inefficiency in the unit.

Berman told the OIG that he was planning to return to the Voting Section after his detail ended in January 2006. In late December 2005, however, Tanner told Berman that he could not return to the Section and that he would have to find a different position. According to Berman, Tanner told him that he was not welcome back in the Section because Section management had conducted an assessment of the Section 5 unit during Berman's detail and had uncovered serious problems in the unit's operations. Berman also told the OIG that Tanner stated that the decision had been made by the Division leadership and that it was final. Berman then took a position training newly hired attorneys at the CRT Office of Professional Development and remained in that office until August 2008, when he transferred back into the Voting Section and resumed his duties as Deputy Chief in charge of the Section 5 unit with the approval of Acting AAG Grace Chung Becker.

Schlozman told the OIG that Berman's reassignment in 2006 was his (Schlozman's) decision, although he stated that incoming AAG Wan Kim assented to the move.[137] According to Schlozman, Berman had been in the Voting Section for an extended period of time and the Section 5 unit had become Berman's "little fiefdom." Schlozman stated that he believed moving Berman and installing a new Deputy to supervise the unit would be "good and healthy." Schlozman stated that he was also aware at the time of the decision of the alleged deficiencies uncovered by Section management's assessment of the Section 5 operations.

Schlozman acknowledged that he and Berman had frequent disagreements on Section 5 matters and other substantive issues, but denied that those differences were the motivation behind the move or that the decision was made in retaliation for Berman's actions on any Voting Section matters. Schlozman told the OIG that, while the disagreements with Berman "didn't help his case," he often believed Berman was a "generally honest broker" and did not believe Berman was attempting to deceive him.

In a 2007 interview with the OIG, Tanner acknowledged that Berman was transferred involuntarily, but stated that he did not believe that Berman or any other employee was involuntarily transferred based on the employee's political ideology.[138] Tanner stated he was dissatisfied with Berman's performance and that Schlozman had also expressed dissatisfaction with Berman's performance. Tanner also stated that he believed there were serious performance deficiencies in the Section 5 unit and problems in the unit's operations, and that Berman was not the proper person to implement changes in the unit.

Berman told the OIG that, although he did not believe that he was transferred because of his actions on a particular case, he believed he was reassigned because he "was not giving them [Division leadership] the answers that they wanted."

According to one Voting Section attorney who was hired by Schlozman, Schlozman stated as he was preparing to leave the Division that the "good Americans" (a phrase Schlozman used to describe his ideologically preferred hires) that remained in the Voting Section were his legacy and jokingly noted that Berman was no longer in the Section. According to witness testimony and other evidence obtained by the OIG, there was a perception among some Voting

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[137] Upon Kim's confirmation in November 2005 as AAG of the Division, Schlozman moved from being Acting AAG of the Division to being the Principal DAAG of the Division.

[138] Tanner was interviewed by the OIG in 2007 in connection with its joint investigation with OPR into Civil Rights Division personnel actions.

Section staff that Berman was transferred because he was perceived to be ideologically liberal.

2. Analysis

We were unable to independently assess the validity of the criticisms that Tanner and Rivera made of the management of the Section 5 unit under Berman's leadership. Nevertheless, we found that perceived ideology or the positions Berman took in Voting Section matters likely were among the motivating factors in Schlozman's decision to transfer Berman involuntarily out of the Section.

First, we note that the OIG's 2008 report concerning Schlozman's actions concluded that he considered political and ideological affiliations in several personnel actions, including the transfer of other CRT career employees, as well as case assignments and awards. Although the specific cases discussed in that report did not involve Voting Section personnel, these transfers occurred in roughly the same timeframe as Berman's reassignment.

Second, we found one of Schlozman's stated motivations for transferring Berman – namely, that Berman had been in the Section "forever" – to be unpersuasive. Although Berman initially joined the Section in 1978, he worked in the Housing Section for roughly nine years (1991-2000), and had served as Deputy Chief for less than six years at the time of his transfer. Moreover, other employees served in the Section for comparable lengths of time, including Tanner, who Schlozman had previously promoted to Section Chief.

Third, we found the manner in which Berman was informed that he could not return to the Section following his detail to support a finding that the involuntary transfer was based on reasons other than performance. The decision to remove Berman appears to have been made suddenly, with no effort to improve Berman's performance. Furthermore, Schlozman and Tanner did not give Berman an opportunity to respond to Rivera's findings concerning the claimed deficiencies in the Section 5 unit's performance; in fact, according to Berman, they never gave him a copy of Rivera's memorandum. Finally, we found it significant that a subsequent Acting AAG, Grace Chung Becker, restored Berman to his position as Voting Section Deputy Chief in charge of Section 5. We doubt that the Acting AAG would have reinstated Berman to his former position if his prior performance in that position had been so problematic.

C. Treatment of Voting Section Chief Christopher Coates (2009)

In this section, we address the treatment of Voting Section Chief Christopher Coates by CRT leadership during the period from January 2009 until January 2010, when Coates left the Voting Section and was detailed to the U.S. Attorney's Office for the District of South Carolina. Coates and others

alleged that he was stripped of his responsibilities and effectively forced out as Section Chief because of his perceived conservative political views or because he favored "race-neutral" enforcement of the voting rights laws.

1. Facts

Coates was hired into the Voting Section in 1996. Coates was named Principal Deputy Chief of the Voting Section by Acting AAG Schlozman in mid-2005, shortly after John Tanner took over for Joseph Rich as Section Chief. Acting AAG Grace Chung Becker promoted Coates to Acting Section Chief in late 2007 upon Tanner's departure, and promoted him to Section Chief in 2008.

Coates told the OIG that he did not favor President Obama being elected, and that he anticipated that he would have problems with the people that the new administration would put into positions of authority, because he did not expect them to favor the enforcement of voting rights laws against minority defendants or on behalf of Whites.

a. The November 2008 Election and the Presidential Transition Period

During the transition to the new administration following the November 2008 election and continuing through the initial months of the new administration, several events occurred that laid the foundation for the fractious relationship between Coates and the incoming Division leadership, including Loretta King (a career Deputy Assistant Attorney General who was temporarily designated as Acting Assistant Attorney General from January 2009 to October 2009) and the administration's political appointees.

According to one former Voting Section manager who is now in private practice, many people in the Civil Rights Division and the civil rights community at large questioned Coates's commitment to civil rights and his judgment as a result of his involvement in the Noxubee case. These concerns were exacerbated by the OIG-OPR report concerning former Acting AAG Schlozman's personnel practices, which was released publicly in January 2009 (during the transition period) and found that Schlozman had inappropriately considered political and ideological affiliations in hiring and other personnel actions in the Division. The report revealed an e-mail from Schlozman concerning a candidate for an Immigration Judge position, in which he vouched for the candidate's political ideology, saying: "[D]on't be dissuaded by his ACLU work on voting matters from years ago. This is a very different man, particularly on immigration issues, he is a true member of the team."[139]

[139] Coates worked on voting matters for the ACLU prior to joining the Voting Section.

According to e-mails involving Division personnel and several witnesses, including Acting AAG Loretta King, it was widely understood in the Division that the Immigration Judge candidate Schlozman referenced was Coates.

As detailed below, we found evidence that, during the transition period and in the first few months of the new administration, some CRT attorneys expressed concerns on various grounds about Coates to members of the presidential transition unit and incoming Division political appointees. Some of those employees urged the transition team or the incoming political appointees to remove Coates as Section Chief. For instance, Pat Tellson, the former Voting Section attorney who at the time worked in a different CRT Section, wrote a memorandum to the leaders of the presidential transition unit overseeing CRT to express concerns about Coates. Tellson stated in the memorandum that, although her comments "may be carrying coals to Newcastle," she believed Coates's "views and actions reflect a contempt toward the mission of the Civil Rights Division...." The memorandum quoted Schlozman's statement in the OIG-OPR report regarding Coates and cited among other items Coates's work on the New Black Panther Party and Noxubee matters.

In a memorandum prepared by President-elect Obama's transition team overseeing the changeover in the Civil Rights Division, the transition team referenced the possibility of making changes in the Division's leadership. The undated memorandum stated in a section entitled "Assessing Career Leadership":

> There should be a careful review of the capabilities and commitment of current career leadership and changes should be made as necessary, particularly in light of past abuses that led to politicization of the Division's work, lost expertise and wrongful political hiring, and other personnel moves. However, care should be taken to insure that any changes will protect the integrity and professionalism of the Division's career attorneys and will not be perceived as the politicization pendulum just swinging in a new direction.

Attorney General Holder told the OIG that he believed he reviewed the memorandum during the transition period, but that he did not think the transition team's recommendation referred specifically to Coates or any other specific career manager.[140]

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[140] Loretta King, who became Acting AAG of CRT at the start of the Obama Administration, told the OIG that she recalled receiving something related to the transition team from Thomas Perez, who worked on the transition team and would later serve as CRT AAG. According to King, she recalled putting it in a pile of documents, but did not recall reading it.

b. Complaints about Coates in 2009

Loretta King served as Acting AAG of the Division from January 21 through October 6, 2009, and Steve Rosenbaum served as Acting DAAG of the Division from January 21 through July 17, 2009. King and Rosenbaum told the OIG they had experiences with Coates early in the new administration that they cited in April and May 2009 as problems with his leadership in discussions about removing Coates as Section Chief. King told the OIG that she also heard complaints about Coates's management from Voting Section personnel. For example, she mentioned that a Deputy Chief in the Section complained to her that Coates was not keeping other managers sufficiently well informed of Section business.

(1) The Missouri Litigation

One early incident involved a pending action against the State of Missouri filed in 2005 under NVRA Section 8. As discussed in Chapter Two, Section 8 requires states to maintain accurate voting lists by, among other things, purging the names of deceased or ineligible voters. By 2008, the Missouri case had been appealed and remanded for further proceedings on a narrow issue. The Voting Section submitted a brief on the remanded issue, which the district court struck in January 2009 because the brief contained data that fell outside the court's discovery parameters. After the new administration took office in January 2009, the Voting Section submitted a new proposed brief to Rosenbaum that was similar to the original but omitted the offending data. The Voting Section did not provide any case history or explanation of the circumstances surrounding the proposed brief, which was due to be filed two days later. For instance, the Voting Section did not tell Rosenbaum that the court had rejected a similar brief a few weeks earlier and did not explain what changes had been made to comply with the court's order. Rosenbaum discovered these facts when he attempted to reach Coates with questions about the brief. Coates was not in the office, and Rosenbaum learned from Voting Section Deputy Chief Rebecca Wertz that the court had rejected a similar prior brief.

Rosenbaum had a conference call with Coates and the attorney who prepared the brief, Deputy Chief Robert Popper, in which they told Rosenbaum about the circumstances of the case. Rosenbaum told the OIG that he explained to Coates and Popper that they should have provided background information prior to sending the brief, so that Rosenbaum could conduct a meaningful review. According to Rosenbaum, Coates, and Popper, the call grew heated when Rosenbaum learned about the case history. Rosenbaum told the OIG that he forcefully expressed his concerns that they had failed to provide him with essential background information. Both Coates and Popper told the OIG that Rosenbaum, who was on a speakerphone during the meeting, shouted so loudly that people in the hallway and in nearby offices heard him.

Rosenbaum later cited this incident in a performance review of Coates, described below.

Coates told the OIG that he did not attempt to hide the history of the Missouri litigation from Rosenbaum, and that he assumed that the incoming Division leadership had access to the outgoing administration's files for ongoing matters, including the Missouri litigation.[141]

(2) Complaints about Coates's Questions to Job Candidates

In early 2009, Acting AAG King received complaints about Coates from one or more former Voting Section lawyers who were working elsewhere in the Department and had applied to transfer back into the Section. According to King, the attorneys complained that Coates asked them whether they would be willing to work on a case like the Noxubee matter – specifically, a case involving White victims or Black defendants. King told the OIG that she viewed Coates's questions to be racially charged and inappropriate "political-barometer" or "hot-potato" questions, that she instructed Coates not to ask such questions in the future, and that Coates complied. King told the OIG that she would not have objected to comparable questions phrased in a less provocative manner, such as whether a candidate would enforce the voting rights laws in a race-neutral manner or whether they would work on a matter that they disagreed with.[142]

Coates acknowledged to the OIG that he asked applicants whether or not they would be capable of enforcing the Voting Rights Act in a race-neutral

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[141] The history of the Missouri litigation is complex. Before the change in administrations, Coates and the Voting Section trial team briefed Acting AAG Grace Becker about the unfavorable prospects for the litigation and recommended that the case be dismissed. It is not clear from the evidence whether Becker had given a clear instruction on this matter at the time the administration ended and she left office. Although the case team did not provide this background information to Rosenbaum at the time he was asked to review the draft brief, we did not find any evidence to suggest that this omission was part of an intentional effort to conceal information from Rosenbaum or to induce him to make a decision with respect to the litigation that he would not have made if more fully informed. Rosenbaum told the OIG that he ultimately agreed with the case team's recommendation to dismiss the matter, and the Department subsequently dismissed the case on a voluntary basis.

[142] During Acting AAG King's tenure, the Division drafted hiring guidance that included the following statements concerning interview questions: "(1) As a general rule, interviewers must avoid asking questions that may be construed as eliciting the applicant's political affiliation or views. (2) Interviewers may inquire, for legitimate non-discriminatory reasons, about an applicant's ability/willingness to work on certain types of cases, such as abortion clinic access, reverse discrimination or death penalty cases. If such questions are asked, they should be asked of all applicants." The Division's final hiring guidance, which contained this language, was issued in January 2010, after AAG Perez took office. *See* Guidance for Civil Rights Division Managers Regarding Hiring for Career Experienced Attorneys (Jan. 20, 2010).

manner, using the Ike Brown case as an example. Coates stated that his motivation for asking the question was not to weed out people of liberal orientation, but rather "to weed out people who would not fairly enforce the law." Coates stated that he believed his questions were appropriate in light of the previous incidents in which he believed Voting Section employees refused to work on matters with which they disagreed, particularly the Noxubee matter.[143] Coates stated further that he did not believe he could effectively manage the Section if employees were refusing to work on cases.[144] Coates told us he believed King was opposed to such questions because she was opposed to the race-neutral enforcement of the VRA. As noted above in footnote 142, the Division issued hiring guidance allowing questions to applicants about whether they would be willing to work on reverse discrimination cases.

c. CRT Leadership's Concerns about Coates's Management of the Voting Section

King and Rosenbaum told the OIG that they believed Coates was a poor manager of the Voting Section, alleging that: (i) Coates regularly submitted materials for Division leadership approval at the last minute, leaving King and Rosenbaum insufficient time for review before the applicable deadline; (ii) materials submitted from the Section under Coates's supervision were of poor quality; (iii) Coates failed to coordinate and collaborate with some of his Deputies; and (iv) Coates employed a laissez-faire approach toward the initiation of investigations and did not have a plan for enforcing the VRA. They also told the OIG that they viewed Coates as a divisive figure in the Section and that they had serious concerns about Coates's trustworthiness, citing the incident described above in which Coates submitted a proposed brief in the Missouri NVRA litigation without important background information and their concerns that Coates might unwittingly facilitate the leaking of information outside the Department.[145]

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[143] As noted in Chapter Three, there was widespread opposition to the Noxubee case within the Voting Section. The extent to which Voting Section employees actually refused to work on this case was disputed. *See* footnote 28 in Chapter Three.

[144] One of the persons who Coates asked this question of was Pat Tellson, the Voting Section attorney who had made comments to the mother of an intern who worked on the Noxubee matter, which is described above in Section II.B of this chapter. Coates told the OIG that he understood that Tellson did not agree with filing Noxubee and NBPP cases and, therefore, had a more particularized reason to ask this question of Tellson.

[145] During the course of our investigation, we did not find any evidence that Coates himself had leaked such information or was likely to do so.

Associate Attorney General Thomas Perrelli told the OIG that, at some point after he arrived at the Department in March 2009, King raised concerns about Coates's performance. Perrelli stated that, over the course of his discussions with King, she never provided details about Coates's performance problems other than stating in general terms that Coates did not manage the Voting Section well. He told the OIG that he distinctly remembered telling her that if she had specific problems, she needed to treat them like a manager, such as addressing the problems with the employee and including them on a performance evaluation.

King told the OIG that she and Rosenbaum took steps to improve Coates's management practices, such as insisting that he employ a case-management strategy and hold regular meetings with his management staff. King acknowledged that Coates was "an obedient public servant" and never refused an order, although he sometimes took a long time to comply. For instance, King told the OIG that she instructed Coates to discontinue the policy on Section 5 matters that the Section would present a single preclearance recommendation to Division leadership, but she believed his implementation of that change was slow.

These criticisms of Coates contrast with the assessments of Coates by the immediately preceding leadership of the Division. Acting AAG Grace Chung Becker, who promoted Coates to Section Chief and supervised him for more than a year, told the OIG that she believed Coates performed well in that position. Becker stated that she believed Coates was a strong manager and that Coates was very good about making sure that if there was a disagreement within his team about what the Section's recommendations should be, they all met with her to discuss their opinions.

d. Discussions by Senior Department Officials about Removing Coates as Voting Section Chief

Contemporaneous documents show that in April and May 2009, Department officials, including Acting AAG Loretta King and Deputy Associate Attorney General Samuel Hirsch explored options for removing Coates as Chief of the Voting Section.[146] Witness accounts differed as to who was the primary advocate of exploring these options, but it is clear that the idea was shared with Attorney General Eric Holder, who generally supported the idea. As detailed below, the deliberations about removing Coates slowed when career personnel officials in the Justice Management Division objected because

[146] The timing of these discussions was significant because they began just before King and Rosenbaum became involved in a dispute with Coates over the prosecution of the New Black Panther Party case, which we discuss in detail in Chapter Three.

removal based on the record that had been documented at the time would not have been appropriate under government personnel rules.

According to Counsel to the Attorney General Aaron Lewis, Attorney General Holder was scheduled to visit the Voting Section early in the new administration as part of an effort to boost morale in the Division. Lewis stated that prior to the visit, which occurred in early March 2009, King told the Attorney General that Coates was mentioned in one of the OIG reports concerning politicization in the Division. Lewis said that AG Holder noted the information, but had no other comment in response to King's comment.[147] Lewis told the OIG that in the meeting with Coates and other CRT section chiefs Holder declared that the past was past and he would not tolerate any politicized enforcement or hiring in the Division, including retaliation from his own political staff.

King told the OIG about another interaction the Attorney General early in the new administration in which she discussed Coates. According to King, following a meeting with the Attorney General early in her tenure as Acting AAG, he asked her how things were going at the Division. According to King, she informed the Attorney General that she was having problems with the Chief of the Voting Section, as well as one other section chief. She stated further that she probably mentioned Coates's lack of candor and may have mentioned Coates's inability to manage the Section. King told the OIG that she did not remember the Attorney General's specific response, but recalled that he expressed concern and may have told her to let him know if she needed any help with it.

On April 7, 2009, Attorney General Holder e-mailed his chief of staff and scheduler requesting a 30-minute meeting with Loretta King and stating: "Need someone to be designated as follower of revitalization effort." King told the OIG that this meeting, which appears to have occurred on April 15, 2009, and is described below, was a result of her earlier conversation with the Attorney General.

On April 10, 2009, a Voting Section trial attorney Carson Poole wrote in an e-mail to Acting AAG Loretta King: "When will the Section be free from enemy hands?" Poole stated in his OIG interview that the term "enemy" referred to Coates, and King also told the OIG that she understood Poole's comment to mean Coates, although she stated that that she would not view Coates as the enemy. Acting AAG King responded to Poole, stating: "LOL! No comment."

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[147] King told the OIG that she did not think the reference to Coates in the OIG report arose in any meeting with the Attorney General.

At Poole's request, King met with him three days later, on April 14, 2009. Poole stated in his OIG interview that he and King discussed the state of the Voting Section, particularly his perspective on what had occurred in the Section over the previous eight years. He told the OIG that he explained to her that there had been numerous problems and explained to her about the rifts in the Voting Section and the cliques involving people in conservative groups and people in non-conservative groups. Poole told the OIG that he did not urge King to remove, replace, or reassign Coates, but also stated that he understood that with a new administration coming in, that it was "a no-brainer" that Coates was not going to remain as Chief. King told the OIG that she did not recall whether she met with Poole following his e-mail on April 10, 2009, and stated that, if they did meet, the meeting was inconsequential. She stated further that she did not recall what she said to Poole or what he said to her.

On April 15, 2009, Hirsch and King met with Attorney General Holder and his Counsel, Aaron Lewis, concerning Coates. In his OIG interview and in contemporaneous e-mails, Hirsch stated that he was called into the meeting and did not know the purpose of the meeting. King told us that the primary purpose of the April 15 meeting was to discuss the available options in dealing with Coates. King stated that the bulk of the conversation focused on whether they should move Coates and what the options would be, and that she did not recall any discussion in the meeting about improving Coates's performance and leaving him as Section Chief. King told the OIG that she did not recall anyone explicitly proposing the idea of removing him from the Section Chief position at the meeting, although she stated that she felt Hirsch had been pushing that idea in general. King said that she did not favor removing Coates at that time, because a decision to remove a career manager should be made by a confirmed AAG rather than by an acting AAG. She said that the Attorney General was "open to" the idea of removing Coates, and that if she had proposed removing Coates the Attorney General would have agreed.

Within an hour of the conclusion of the April 15 meeting, King e-mailed Hirsch at 1:57 pm to let him know that the Division's Executive Office "is checking on the rules for removal now." That same afternoon King received an e-mail from the Division's Executive Office staff on the subject "Christopher Coates," indicating his 1-year probationary period as Section Chief had commenced on May 25, 2008, describing the rules regarding removal of Senior Executive Service (SES) officials, and attaching a document entitled "SES Removals and Suspensions."

Hirsch told us that he had very little specific recollection of the April 15 meeting with the Attorney General. We found that he was substantially involved in subsequent communications and meetings regarding the possibility of removing Coates as Section Chief. Hirsch told us he believed that King had concerns about Coates's management and that she thought it would be easier

to remove Coates before his probationary period as an SES employee expired, which was creating, for King, a sense of urgency in taking action on Coates.[148]

In her comments to the OIG concerning the draft report, King stated that Hirsch's assertion that she had a sense of urgency in taking action on Coates is "untrue." King stated that she was very clear in the meeting that she did not favor removing Coates at the time because she believed a decision to remove a career manager should be made by a confirmed AAG rather than by an Acting AAG. She stated further that she believed at the time and continues to believe that it was not her role to remove Coates.

At 7:56 pm on the evening of April 15, Hirsch wrote an e-mail to Associate Attorney General Thomas Perrelli and Associate Deputy Attorney General Donald Verrilli describing the April 15 meeting as follows:

> As you know, from 12:30 to about 1:10 today, I met with the AG, Loretta King, and Aaron Lewis. Although I did not know in advance what would be on the agenda, the meeting ended up focusing on personnel issues primarily involving the current and past leaders of CRT's Voting Section. As of now, the four of us are scheduled to meet again tomorrow from 1:00 to 1:30, to discuss specific options for taking decisive and relatively quick action to resolve these personnel issues. My understanding is that Loretta has been working hard this afternoon with her Executive Office to flesh out those options.
>
> These issues, however, are complex and not easily resolvable. While I fully appreciate the AG's desire to move boldly and speedily to fix these important problems, my sense is that the meeting tomorrow is premature. Is it possible, in your morning meeting tomorrow, for you and [Deputy Attorney General David Ogden] to suggest postponing the 1:00 meeting and instead setting up a more orderly process for researching and evaluating all our options here?

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[148] As a general rule, an SES appointee serves under a probationary period for one calendar year from the date of appointment, during which time the standards for removing the appointee are lower than for a post-probationary SES appointee. Coates was appointed to the Senior Executive Service on May 25, 2008, and therefore his probationary period ended on May 25, 2009. However, a different federal law prohibits the involuntary removal of an SES appointee during their probationary period for 120 days following the appointment of the head of the agency (in this case, the Attorney General), and the imposition of the 120-day moratorium does not extend the appointee's probationary period. In this case, given that Attorney General Holder was confirmed on February 7, 2009, the 120-day moratorium began on that date and expired on June 7, 2009. Therefore, although Coates was in his SES probationary period through May 25, 2009, federal law prohibited his removal for performance reasons until after June 7, 2009.

Perrelli responded by e-mail at 8:10 pm that "[w]e can try to cut this off," and Verrilli concurred one minute later, at 8:11 pm, stating: "Right. That is what we should try to do. Thanks very much." The meeting that was initially to have taken place the next day was later cancelled. We found no evidence that this meeting was rescheduled, although Coates was discussed in a meeting with the Attorney General on May 5, 2009, as described below.

Attorney General Holder told the OIG that he did not specifically recall the April 15 meeting, but that he recalled discussions in early 2009 with King about Coates's performance deficiencies and his views on civil rights enforcement.[149] Attorney General Holder told the OIG that King told him that Coates was a controversial and divisive force in the Voting Section. The Attorney General told us that he understood based on what King conveyed to him that:

> [Coates] wanted to expand the use of the power of the Civil Rights Division in such a way that it would take us into areas that, though justified, would come at a cost of that which the Department traditionally had done, at the cost of people [that the] Civil Rights Division had traditionally protected. [Y]ou can do both, but my sense was that the degree to which he wanted to do this, for lack of a better term, new stuff, would mean it would have a really negative impact on our capacity to [do] the traditional [cases].

Attorney General Holder told the OIG that the new type of cases he understood Coates wanted to pursue were "reverse-discrimination" cases. According to the Attorney General, he understood that King believed Coates "was not a person who [] believed in the traditional way in which things had been done in the Civil Rights Division" under Republican and Democratic administrations and that Coates's view on civil rights enforcement was "inconsistent with long-time Justice Department interpretations and policies." Attorney General Holder stated that there was no discussion about Coates's "party affiliation or his association with certain people," such as former CRT Acting AAG Schlozman.

Attorney General Holder stated that he recalled receiving an oral recommendation that Coates should be removed as Section Chief. The Attorney General stated that King made clear to him that Coates was not "a

[149] The Attorney General told the OIG that he believed that Acting DAAG Rosenbaum may have been involved in these discussions and that he may have shared King's views concerning Coates. After reviewing a draft version of this report, however, Rosenbaum told the OIG that he did not participate in the April 15 meeting or the May 5 meeting (discussed below), and that he does not recall discussing his views about Coates's performance with the Attorney General at any time. The relevant evidence indicates that Rosenbaum did not attend the April 15 or May 5 meetings with the Attorney General. Rosenbaum also stated that he did not share the views concerning Coates's enforcement priorities described in the text.

good fit for the office, given what we wanted to do with the office, which was to bring it back to where it was prior to [] the Bush years," and that Coates would at a minimum find it difficult to implement the Obama Administration's policies.

In addition, the Attorney General stated he was told that management issues were "a big part" of the concerns regarding Coates's performance, noting that he understood that the Voting Section was particularly divided in ideological camps. He said there was no discussion or consideration of alternative personnel actions beyond removing or reassigning Coates, such as counseling or training, because he believed, based on what King and Rosenbaum told him, that previous efforts to improve Coates's leadership and alleviate the Section's factionalization had failed. The Attorney General stated that it was his impression from the meeting that "a lot of stuff had been tried" to improve Coates' performance but "there was no possibility of redemption."

Attorney General Holder stated that he told King that, if she believed a change was necessary, she was in charge of the Division and he authorized her to make such changes. King and Hirsch likewise told us that Holder assured King that, although she was the AAG in an acting capacity, she was the head of the division and that, if there was a personnel problem and there was an appropriate way to fix it, she should act on it rather than leaving the problem until the confirmed AAG arrived.

Although the initial follow-up meeting was cancelled, in the days following the April 15 meeting with the Attorney General, King and Hirsch continued to consult with Department HR personnel, particularly the CRT HR staff and senior officials in JMD, to explore options for removing or reassigning Coates. Late at night on April 16, King sent Hirsch an e-mail with a subject line "our task" indicating that she would call JMD the following day "to see if JMD can provide further guidance to us" and to possibly arrange a meeting with JMD. The next day, Friday, April 17, King arranged a meeting with career JMD officials for Monday, April 20, and circulated a calendar appointment to Verrilli and Hirsch entitled "Meeting to discuss SES Separation Rules." King and Hirsch attended the April 20 meeting, and a few days later, on April 23, Hirsch sent the JMD officials an e-mail with a subject line "Human resources issue" and asked the officials if they could send him and King "the basic description of relevant policies, which we discussed at our meeting earlier this week . . . ."

The next day, April 24, the career JMD officials sent King and Hirsch an e-mail, stating that based on their understanding of Coates's performance history from the previous and current performance cycles, "we do not support a performance-based action at this time. Further documentation and discussion should occur." According to the JMD officials who wrote the e-mail, they arrived at this conclusion because the Division had not sufficiently

documented a performance problem for Coates in the 2008 and 2009 performance cycles, during which Coates had received the highest possible performance rating – "outstanding" – in 2008, and he had received a substantial performance bonus and pay increase that year.[150] The JMD officials also noted that Division leadership had not conducted a mid-year performance appraisal for Coates in 2009 that documented performance deficiencies, and in the e-mail they recommended that such an appraisal be completed immediately. The JMD officials also recommended to King and Hirsch that they consider offering Coates a reassignment to a temporary SES position with meaningful duties. In the e-mail, the JMD officials also described the relevant statutory and regulatory provisions governing the removal procedures for SES officials following a presidential transition.

As discussed in Chapter Three, during this same period that there were serious discussions among senior officials in the Division and the Department about removing Coates as Section Chief, a tense dispute between King, Rosenbaum, and Coates arose in connection with the New Black Panther Party (NBPP) case. During a meeting on May 1, 2009, that concerned whether the Department should seek a default judgment against all four defendants in the NBPP case, a heated argument erupted between Rosenbaum and Coates, in King's presence, concerning Rosenbaum's accusation that Coates and the NBPP trial team had hidden information about the NBPP website from Division leadership. Hirsch noted that he was not present for the incident but that he viewed this entire episode as important in evaluating Coates's performance as the Chief of the Voting Section, which has been heavily criticized. So I asked both Loretta and Steve to take the time to write down exactly what had happened on Thursday night [April 30] and on Friday morning [May 1], so that there would be a contemporaneous record for their files."

Shortly after that meeting on May 1 regarding the NBPP case, an appointment entitled "CIVIL RIGHTS REFORM MEETING" was scheduled for Attorney General Holder with Perrelli, King, Hirsch, Verrilli, and Aaron Lewis, the Attorney General's Counsel. Later on May 1, Lewis e-mailed the Attorney General's chief of staff, stating: "After the morning meeting, the Attorney General asked [his assistant] to schedule a meeting today with the Associate Attorney General, Sam Hirsch, and Loretta King from CRT." Lewis's message stated further that King would not be able to attend the meeting as then scheduled and he proposed moving the meeting because "[King's] participation is necessary to provide the Attorney General the information he wants." The meeting was subsequently rescheduled to May 5, 2009.

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[150] One JMD official also noted that Coates's supervisors had requested a waiver of a standard 12-month moratorium on pay raises following his selection for the SES in order to give Coates a raise in salary. The JMD official further estimated that such waivers are sought for only 10-25 of the 400 employees selected for SES annually.

According to witnesses and documents, the central subject of the May 5 meeting with the Attorney General was Coates's removal. During the meeting, King updated the Attorney General about the advice JMD had given regarding Coates's removal. In addition, King told the Attorney General about the status of the NBPP case, discussed the possible dismissal of some of the NBPP defendants, and described Coates's conduct in the NBPP matter. Hirsch and Verrilli told the OIG that they recalled the Attorney General urging King to do what was proper with respect to Coates and to let the chips fall where they may.

Aaron Lewis, the Counsel to Attorney General Holder who attended more than one meeting at which Coates was discussed, told the OIG he did not recall events at specific meetings, but he recalled general discussion of Coates's ability to enforce the law. Lewis stated that the bulk of the conversations were about Coates's willingness to enforce the laws evenhandedly. Lewis told the OIG that he did not have any recollection of discussions on Coates's management abilities, with the exception of conversations about how Coates's lack of willingness to enforce all civil rights laws could affect his ability to manage the Section.

According to Lewis, he recalled that Hirsch, and perhaps others, held the view that Coates would not be willing to enforce all the civil rights laws and that "he would still kind of have a political bone to pick." Lewis stated further that he recalled that the resolution to that situation discussed among the Attorney General, King, Hirsch, and Lewis was to, "tell him [Coates] to do it [equally enforce the civil rights laws], and if he doesn't do it, then we'll deal with it at that point." Lewis stated it was reported to the Attorney General during the consideration of the NBPP matter in May 2009 that the Voting Section had low morale and that "convincing those folks that it was safe to do their jobs" was going to be a challenge. Lewis stated that he believed Coates was pushing the NBPP case against King's recommendation, and it seemed to CRT leadership that Coates "might not have been as interested in [] traditional voting rights cases and that he wasn't really pushing those cases the way he was pushing this one. If this was reflective of his prioritization in management, then that wasn't [] a great reflection."

e. Coates's Mid-Year Performance Review

Pursuant to JMD's guidance, starting in May 2009, King and Rosenbaum began preparing a written mid-year performance review for Coates.[151] According to King, the purpose of the review was to document Coates's

[151] In his comments concerning the OIG's draft report, Hirsch told us that the preparation and presentation of the mid-year review was done solely by CRT and that his involvement in this matter had concluded in early May, long before the performance review was prepared and presented.

performance deficiencies and put Coates on notice about those deficiencies. Rosenbaum drafted the 3-page document and King edited it. The document included some of the complaints concerning Coates's management style that Voting Section employees had made, such as Coates's failure to hold meetings with his Voting Section deputy chiefs. King told the OIG that she believed at this time that removing Coates was a decision for Perez, whose nomination for CRT AAG was pending, and she was laying a foundation for Perez to remove Coates, if he wanted to do so. King stated that Coates's review was probably the only written mid-year performance evaluation for CRT SES personnel at the time. King presented the document, entitled "Performance Deficiencies since January 20, 2009," to Coates on June 19, 2009.

The document identified roughly one dozen management failures and incidents in which Coates allegedly acted improperly, ranging from serious accusations to minor incidents. For instance, it stated that Coates: (i) did not have an effective system in place to track litigation deadlines, which forced the Department to seek extensions of deadlines on a regular basis; (ii) failed to provide Division leadership with requisite background information necessary to review his recommendations, citing specifically the Missouri NVRA Section 8 litigation and the NBPP matter; (iii) failed to promote collaboration in the Voting Section or hold regular Section-wide meetings or meetings with Section management beyond the biweekly management meetings with Division leadership; (iv) did not implement an effective plan to enforce VRA Section 2 with respect to vote-dilution; (v) took actions that "could fairly be seen as retaliatory" against a Section supervisor who disagreed with Coates on a case (involving ongoing litigation in New Mexico); and (vi) approved the detail of a Voting Section attorney to a U.S. Attorney's office without informing CRT leadership. The document concluded that "Mr. Coates has been an ineffective leader of the Voting Section, has failed to provide candid and complete briefings for Division management, has failed to ensure that proposed briefs address critical issues and are well-written and has responded to criticism with contumacious behavior."

Coates told the OIG that he believed the document contained "a number of half-truths or false allegations," and that he refused to sign it because he believed it would be used as an admission of the asserted deficiencies. Roughly one week later, Coates sent King a 9-page memorandum containing a point-by-point rebuttal of the allegations in the performance deficiencies document. For example, in response to the allegation that Coates "ha[d] not implemented an effective plan to enforce the vote dilution prohibitions of Section 2" and that he had "not assigned a manager the responsibility for developing Section 2 investigations," Coates stated that he had previously provided to King and Rosenbaum a written explanation of the plan already in effect governing Section 2 enforcement. Coates's rebuttal memorandum also identified a Deputy Chief of the Section as having been tasked with overseeing the implementation of the Section 2 plan for identifying investigative targets. In

addition, Coates defended the Section's record on Section 2 enforcement during his tenure as Chief, asserting that the Section had filed four Section 2 vote-dilution cases, three of which had settled favorably; that three vote-dilution investigations had been approved during Rosenbaum's tenure as Acting DAAG, with more investigations in development; and that his record on Section 2 matters was better than every comparable time-period during the Clinton Administration. Coates concluded his rebuttal with a lengthy attack on Rosenbaum's motivations, accusing Rosenbaum of targeting Coates because he was a conservative and a Republican, and of attempting to "endear himself" with the civil rights groups and CRT personnel who opposed Coates due to his involvement in the Noxubee and NBPP cases.

Coates stated that he heard nothing more about his mid-year evaluation after he gave King the rebuttal, and that he never received an annual performance evaluation for 2009. King told the OIG that she did not recall the specifics of Coates's response, taking any action based on it, or asking Rosenbaum for his reaction to it. Rosenbaum told us he never saw Coates's response. King told us that the mid-year performance evaluation was not changed. Coates told the OIG that, following the presentation of his mid-year review, he concluded that he was in an impossible situation and would likely not be able to remain in the Division. Coates said he asked King about transferring to another position, but that she told him he would have to discuss it with Perez once he was confirmed as AAG. King told the OIG that she took no further action regarding Coates's position as Section Chief.

f. Exclusion of Coates from Some Voting-Related Projects

During the period from January 2009 until he left the Voting Section in January 2010, we found that Coates was excluded from, and kept uninformed about, several sensitive projects of importance to the Voting Section, in which political appointees worked directly with Coates's subordinates. These projects, which were largely led by Hirsch and the Principal DAAG in the Office of Legal Policy, Spencer Overton, included consideration of voting-related legislative proposals and a group working on a sensitive legislative project related to a provision of the Voting Rights Act ("Sensitive Working Group").[152]

In connection with each of these projects, Hirsch had extensive communications directly with career staff of the Voting Section, often without Coates's knowledge or input. In fact, Hirsch repeatedly instructed the Voting Section staff, as well as others involved in the various projects, that information concerning those efforts were "close hold," "confidential," or

[152] In describing this project, Section Chief Chris Herren told us it involved both legislative strategy and litigation strategy.

statements to that effect. The OIG's review of relevant documents indicated that Hirsch instructed the people involved in those projects about the confidentiality of these matters on at least 20 occasions. Several witnesses told the OIG that they understood Hirsch's instructions to mean not telling anyone about the existence or substance of the projects.[153]

Our review of the relevant evidence established that these projects, which started in general terms in March or April 2009 and continued through December 2009, varied in sensitivity and the extent to which Coates was excluded. For at least two of the matters, , Coates was apparently never informed about the existence of the project, even though they involved matters that could affect the Voting Section's enforcement responsibilities and members of his staff were working on them. Coates apparently was not initially informed about other projects, but he eventually learned about them from Section staff or others in the Department, who mistakenly or intentionally disregarded Hirsch's close-hold instructions.[154] Coates knew about the existence of another group of projects, but was at various times and to varying degrees left out of substantive discussions between political appointees and the career staff he supervised.

Julie Fernandes, who joined the Division as a DAAG on July 13, 2009, characterized Hirsch's projects as "cloak-and-dagger" and said these efforts existed in a "cone of silence," which excluded anyone not invited to work on the matter, but particularly Coates. She told the OIG that she remembered being told explicitly that Coates could not be included in discussions regarding these projects, saying that her understanding of the confidentiality instruction was "[d]on't tell anybody and don't tell Coates." Fernandes stated that she resisted the exclusion of Coates from such projects because she believed that Coates, as the Section Chief, should be involved or at least informed about the Department's voting-related efforts. Fernandes stated that she did not believe there was any reason to not trust Coates and that she pushed vigorously over Hirsch's objections to "open up" the Division's decision-making process.

Hirsch told the OIG that Coates was indeed excluded from some of the projects (for instance, the Sensitive Working Group) and not informed of the

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[153] In its comments to the draft report, the Department provided information concerning, Coates's involvement in several other voting-related projects during this same period that the Department told us were led by Hirsch.

[154] For instance, one Section manager who worked on one of these sensitive projects told the OIG that he/she believed that he/she should not tell Coates about the project, but eventually decided that it was appropriate to tell Coates about the existence of the project, the substantive issues involved, and where the project was going. In another instance, a trial attorney told Hirsch in an e-mail: "Chris [Herren] has advised me that he let Chris C. know that I was doing some work on this, so I apparently am out of the closet. Looks like we are ever so close."

involvement of others from the Voting Section. Hirsch said that this was done in consultation with Overton and on at least some occasions at the request of the Section personnel (namely, Coates's subordinates) who were working on the matters and who indicated that Coates would either be upset at their involvement with Division leadership or would engage in endless debates that would slow down the work to "a snail's pace." Hirsch told the OIG that he was "a little dumbfounded" that the employees believed their relationship with the Section Chief was so bad that they did not want him to know about their work on those projects. Hirsch stated further that he was most interested in getting the substantive experts in the Section involved and, therefore, although he was uncomfortable with excluding Coates, he and Overton acquiesced to the staff's requests.

However, none of the four Voting Section employees that Hirsch identified as making those requests told the OIG that they requested to Hirsch that their involvement in the special projects be kept confidential from Coates. Two of the employees denied that they made such a request and stated further that they would had no reason to do so; a third told us he does not recall anything like that and that he believed Coates was aware of his involvement on those projects; and the fourth said that he did not think that he made that request, or that he would have had a reason to make that request. Additionally, three of the employees, as well as Fernandes, told the OIG that it was Hirsch who expressed the need for confidentiality on those projects. Likewise, the OIG's review of relevant e-mails established that Hirsch repeatedly raised the confidentiality of the projects and exhorted others to keep the information "close-hold" or "confidential." Further, Overton told us that he did not recall any conversation with Hirsch in which Hirsch told him of concerns raised by Voting Section personnel regarding Coates. Nor could Overton recall any instances where Section personnel requested that their involvement be kept from Coates.

Hirsch also told the OIG in substance that another reason Coates was excluded from some of the projects was because Hirsch wanted to keep the groups small and was concerned that Coates would fail to exercise discretion in keeping things within the group if he disagreed with the outcome on a particular issue. In explaining why Coates was excluded from the Sensitive Working Group, Hirsch stated that Coates's perceived ideology with respect to the enforcement of voting rights laws "may have been in the air as part of the mix," though he said that the central concern was that things be kept within a small, cohesive group. Hirsch stated further that he believed that there was a general sense that, if Coates were involved, the group would slow down considerably and end up in endless debates about principles and timing, because that was Coates's style. He said that a lot of members in the group shared a certain amount of common ground about voting rights and election law and that Coates may have been out of sync with those views.

g. Coates's Departure from the Voting Section

As noted previously, Julie Fernandes joined the Department as a DAAG in the CRT on July 13, 2009. Among her responsibilities was overseeing the Voting Section and, as a result, Coates reported directly to Fernandes. Soon thereafter, and just weeks following Acting AAG King's presentation to Coates of his poor mid-year performance review, Fernandes offered Voting Section personnel the opportunity for one-on-one "listening sessions" with her about conditions in the Voting Section. According to Fernandes, she held meetings with 20-30 Section employees and heard consistent complaints regarding the management of the Section, such as a lack of Section-wide meetings, limited communication and collaboration among managers, and insufficient transparency in case assignments and other decision-making. Fernandes stated that she believed the Section had no formal assignment process, a poor case management system, and no periodic reviews of attorneys' dockets. Fernandes stated that she perceived a "lock-down mentality" and a "culture of fear" among Section personnel.

Fernandes told the OIG that she concluded that Coates was a "terrible" manager. Fernandes stated that she pushed Coates to make the Section more transparent and collaborative, conduct regular attorney docket reviews, communicate more effectively with his management team, and hold more Section-wide meetings.

In light of these interactions with Fernandes, Coates told us that he believed the hostile relationship with Division leadership that began with Rosenbaum and King would continue with Fernandes as DAAG. Coates stated that, although the Voting Section Chief position was the most important he had ever held and that he did not want to leave at that time, he believed that it was not going to work out. Therefore, shortly after Perez was confirmed as AAG in October 2009, Coates raised to Perez the idea of a transfer away from the Voting Section. According to Coates, he mentioned to Perez that he had conflicts with individuals in Division leadership, and that he believed people in CRT leadership, other CRT Section Chiefs, and some in the civil rights community did not want him to be Voting Section Chief any longer. He told us he did not go into detail on those problems. Coates said that he told Perez that he could live without being section chief and that he would very much be interested in transferring to the U.S. Attorney's Office in Charleston, South Carolina. Coates told the OIG that, although he believed he had been mistreated, he did not present a litany of complaints to Perez because he wanted Perez to help him secure a detail in South Carolina. He said that he made the presentation in that way because he wanted Perez to feel that there was something in the move for him as well.

According to Perez, during this October 2009 meeting Coates stated that he was tired of managing the Section and told Perez that he was a "lousy"

manager. Perez stated that Coates told him that the new administration should have the freedom to do what it wanted to do. Perez stated that Coates expressed a strong interest in transferring to Charleston for personal reasons.

Perez agreed to pursue Coates's request, and within several weeks, an arrangement was reached with the U.S. Attorney's Office in Charleston. Pursuant to that agreement, Coates's title was changed to Counselor to the Chief of the Voting Section, which was still an SES position, and then detailed from the Counselor position to be an Assistant U.S. Attorney in South Carolina from January 2010 until May 31, 2011. Under the terms of the detail agreement, which was memorialized in a Memorandum of Understanding, Coates agreed to relinquish his SES position following the completion of the detail in May 2011.[155] We found e-mails from CRT personnel, including DAAG Fernandes, Voting Section managers, and at least one attorney, expressing happiness over Coates's departure from the Section. After the detail ended in May 2011, Coates retired from the Department.

2. Analysis

Section Chiefs within components of the Department of Justice are generally career employees, not political appointees, and many are members of the SES. Federal regulations prohibit the involuntary removal of any SES employee for 120 days following the appointment of a new Attorney General and a new supervising AAG. As noted earlier, under federal regulations even probationary SES appointees may not be involuntarily removed for 120 days following the appointment of the head of the agency. We believe that these practices and rules result in a continuity in management at the Department of Justice at the outset of a new administration that promotes consistency in the enforcement of laws and helps avoid the perception that the enforcement of the nation's laws depends on the outcome of an election.

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[155] We note that Coates's detail to South Carolina to serve as an Assistant U.S. Attorney appears to have violated regulations governing SES employees. For example, 5 C.F.R. § 317.903(b) requires agencies to obtain approval from the Office of Personnel Management for details of SES personnel to non-SES positions for more than 240 days. Although CRT notified JMD about the detail, we found no evidence that the Department notified OPM or that OPM approved Coates's detail, which lasted for approximately 18 months. In its comments to the draft report, the Division stated that the longstanding practice has been that any contact with OPM regarding SES employees comes from JMD HR, not from the component's HR staff, which is consistent with DOJ Order 1920.1 Senior Executive Service (Oct. 1979), and that the failure to obtain OPM approval appeared to be an administrative oversight.

We also note that the Senior Executive Service is defined as positions with executive, supervisory, or managerial responsibilities, *see* 5 U.S.C. § 3132(a)(2) and 5 C.F.R. § 214.201, and Coates told the OIG that he served as a trial attorney in the U.S. Attorney's Office in South Carolina.

The evidence established that, starting very early in the new administration, there were serious discussions among senior Department officials about removing Coates, a probationary SES appointee, from the Voting Section Chief position. These discussions were more than theoretical. In a contemporaneous e-mail written immediately after the first meeting on this topic on April 15, 2009, Hirsch noted that there were plans to have immediate discussions about "taking decisive and relatively quick action to resolve these personnel issues," which we concluded referred to moving quickly to replace Coates as Section Chief. The evidence indicates that removal or reassignment of Coates were the predominant options considered and that few, if any, alternatives were discussed.

We could not determine whether Deputy Associate Attorney General Hirsch or Acting AAG King was the primary advocate for removing Coates, as each of them identified the other as the driving force behind these discussions.[156] There is no dispute, however, that both King and Hirsch had significant involvement in the discussions about removing Coates and that the discussions about doing so began no later than April 2009.

Attorney General Holder stated that the polarized condition of the Voting Section was a significant management failure and "a big part" of the rationale for the discussions about removing Coates, and that he understood that "a lot of stuff had been tried" to improve Coates's performance but "there was no possibility of redemption." However, he also described the other reasons that were given to him by King and others for Coates's removal in ideological terms: that Coates had a "very conservative view of civil rights law" and wanted to make "reverse-discrimination" cases such a high priority in the Voting Section that it would have a negative impact on the Section's ability to do "traditional" cases on behalf of racial and language minority voters, and that Coates "had a view of the law that was inconsistent with long time Justice Department interpretations and policies." Significantly, the heated disagreement between Coates and Division leadership over the NBPP case had not yet occurred when the discussions about removing Coates began. King and Rosenbaum both denied criticizing Coates to Holder on the basis of ideology.

We recognize that if a career Section Chief's ideology affected his or her willingness or ability to implement Division leadership's legitimate enforcement priorities that might be sufficient evidence of a performance issue that could support corrective action against the Section Chief. While Coates himself

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[156] King told the OIG that she believed Hirsch was "very interested" in moving Coates from the Chief position and that Hirsch made statements about the necessity of removing Coates. King stated that she thinks Hirsch probably arrived at that conclusion because she and Rosenbaum were complaining to Hirsch about Coates. Hirsch told the OIG that he assumed the idea of Coates's removal came from King and noted that it was King who brought the matter to the Attorney General's attention.

acknowledged that he held conservative views and openly favored expanding the enforcement of the voting rights laws on behalf of White voters even if it meant pursuing cases against minority defendants, we found no evidence that Coates had declined to implement any administration directive or otherwise failed to implement the policies of Division leadership. There is no evidence that Coates had proposed even one new case on behalf of White voters or against Black defendants to Division leadership at the time they began the serious discussions about removing him, or that he had opposed the filing of any "traditional" cases that the Department's leadership wanted to pursue. To the contrary, we found that Coates supported several Section 2 cases and investigations on behalf of minority voters throughout his career, including during his tenure as Section Chief under the new administration. Indeed, King told the OIG that although Coates was sometimes slow to implement her directions, he was an "obedient public servant" and never refused an order (and, in fact, she indicated that he complied with her direction regarding appropriate questioning of applicants).

We concluded that the allegation that Coates's ideology was undermining the enforcement priorities of the new administration was inadequately supported, particularly at the time the high-level discussions about removing Coates began. Nevertheless, this was part of the rationale that had been provided to the Attorney General and it was cited by the Attorney General in explaining his support for Coates's removal. We did not find evidence indicating that the Attorney General knew that there was no support for the suggestion that Coates had declined to implement administration directives or otherwise failed to implement the policies of Division leadership.

After career officials in JMD told King and Hirsch that the JMD officials would not support a performance-based removal of Coates based upon the documented record as it existed in April 2009, King and Rosenbaum began documenting Coates's performance deficiencies for the acknowledged purpose of creating an adequate record to support Coates's removal in the future. This culminated in the presentation of the "Performance Deficiencies" document by King to Coates in June 2009. We noted that King told the OIG that she did not recall reading Coates's response, taking any action based on his comments, or telling Rosenbaum about it. Moreover, there was no effort to follow up on the mid-year performance review as would be expected if those deficiencies were, indeed, the driving force for the desired personnel action.

We found that Division leadership held genuine beliefs about Coates's weaknesses as a manager, and we recognize that Coates was not without fault in his management of the Section and his relationships with Division leadership. For example, we believe that at times Coates took insufficient steps to ensure that relevant and accurate information was provided to Division leadership in connection with seeking their approval of court submissions, and that he did not always ensure that materials were provided them early enough

to permit an adequate review. According to Perez, Coates himself admitted he was not a good manager. We also note that a substantial number of Voting Section career employees, including more than one manager, expressed dissatisfaction with Coates as a manager in interviews and contemporaneous e-mails, although we cannot determine to what extent such views may have been influenced by the sharp ideological divides within the Section.

We did not attempt to resolve whether all of the criticisms were justified. We note that Division leadership in the prior administration spoke highly of Coates's management. More significantly, the serious discussions about removing Coates began very early in the new administration – in April 2009 – which we believe was too early to have been based entirely on a conclusion that extensive efforts to improve Coates's management had been tried and failed and that further attempts to improve his performance would be pointless. We found it significant that the predominant solution that Division leadership explored following the initial meeting with the Attorney General concerning Coates was removal or reassignment. The evidence established that there was little consideration of alternatives to improve his performance, such as counseling, training, mediation, or a Performance Improvement Plan. In short, although Division leadership clearly had concerns about Coates's management, the timing and urgency of the discussions about removing him in April 2009 suggests to us that another factor was also at play: the belief, which was conveyed to the Attorney General and his Counsel, Aaron Lewis, that Coates's ideology drove a desire to pursue reverse-discrimination cases that would come at the expense of the traditional cases that were the administration's priority.

We concluded that Coates's ideology was a factor in the discussions among senior Department and Division officials about removing or reassigning Coates. We believe, however, that the Division's leadership had not established that Coates's ideology was creating an uncorrectable obstacle to the implementation of the administration's enforcement priorities at the time they began exploring efforts to remove him. Based on all the evidence, we believe that Division leadership's assessment of Coates was influenced by Coates's high-profile association with the Noxubee and NBPP cases and by the fact that Coates had been promoted to Principal Deputy Chief of the Voting Section by former Acting AAG Schlozman (who as noted above had a documented record of making appointments on partisan or ideological bases).[157] Based on our

[157] The perception about Schlozman's possible motivation in promoting Coates may well have been a fair one. As detailed in our prior report, Schlozman had a documented record of making hiring decisions on improper partisan bases. He referred to Coates in an e-mail using terminology that was very similar to other phrases he commonly used to describe other conservative candidates for employment that he favored for selection because of their partisan or ideological affiliations. Nevertheless, even if ideology was a consideration in Schlozman's selection of Coates as Principal Deputy Chief, absent a demonstrated impact that his ideology

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review of employee e-mails and interviews of several witnesses, we found that some employees in the Voting Section and some civil rights activists considered Coates to be hostile to "traditional" voting rights enforcement for the same reasons. The new administration had pledged to make major changes in the Civil Rights Division, including returning the focus of the Voting Section to "traditional enforcement efforts." We concluded that the retention of Coates was likely perceived by Division leadership as an obstacle to the promised change, including a renewed focus on "traditional" civil rights enforcement, and that the discussions about removing Coates were based in part on his view of the voting laws.

Regardless of whether federal law permitted a career SES official in the Executive Branch to be removed under the circumstances present here, we believe that officials at the Department of Justice must be particularly careful when exercising removal authority in order to protect the integrity and professionalism of federal law enforcement. We do not believe that the removal of career Section Chiefs when administrations change should become a routine event based on the mere expectation, in the absence of something more, that the incumbent will not be able or willing to implement the new administration's priorities. In this case, we concluded that the Department's consideration of removing or replacing Coates was based in part on the unsupported belief that Coates could not be trusted to faithfully implement the new administration's policies and that he would not do so if he was allowed to remain in his position.

Finally, we had deep concerns about the fact that Coates was excluded from, and kept uninformed about, several sensitive projects of importance to the Voting Section, in which political appointees worked directly with Coates's subordinates. Our concerns are similar to our concerns about the consideration of removing him as Section Chief.[158] These projects sometimes involved direct communications between a political appointee and career employees who were subordinate to Coates, without Coates's participation or knowledge. As with the communications between von Spakovsky and Everett discussed above and in Chapter Three, such surreptitious communications between political appointees and career personnel that exclude certain Section managers are highly problematic. The exclusion of a career Section Chief by political appointees from matters so closely related to his Section's expertise

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had on his ability to implement Division and administration priorities, it should not have been a factor that was considered in deciding whether to remove him.

[158] We note that if the concerns about Coates had been limited to his managerial abilities, such concerns would not have been a compelling reason to exclude him from substantive projects relating to the work of the Voting Section, in which Hirsch utilized attorneys from the Section. Nor has any persuasive reason been given to us to suspect Coates was likely to leak sensitive information. These circumstances indicate that the exclusion of Coates from some projects was based on ideology.

and jurisdiction, and from communications with attorneys under his supervision, is indicative of a dysfunctional management chain, and it inevitably feeds the perception that the administration of justice is politicized. Particularly given the significant political ramifications of the work of the Voting Section, we believe that Division and Department leadership should exercise great caution to avoid such a perception. Instead, in this case, the exclusion of Coates only served to exacerbate the perception.

CHAPTER FIVE
THE VOTING SECTION'S RECENT HIRING OF TRIAL ATTORNEYS

I. Introduction

In this chapter we describe the results of our investigation into whether members of the Voting Section's hiring committee and the leadership of the Voting Section and CRT considered the political affiliations or ideology of applicants for Voting Section experienced trial attorney positions advertised between January 20, 2009, and December 31, 2011. We undertook this portion of our review after receiving a letter request from Senator Charles Grassley, dated August 10, 2011, in which Senator Grassley asked the OIG to update the joint OIG-OPR review in 2008 of politicized hiring in the Civil Rights Division.

To complete its investigation, the OIG requested detailed information about the Voting Section's hiring of experienced trial attorneys. We examined thousands of pages of documents and e-mails concerning the Voting Section's hiring procedures and selection decisions. During the period relevant to our investigation the Voting Section received 482 applications for vacant experienced trial attorney positions. We collected information on each applicant's education, work history, and political affiliations and analyzed the resulting data to determine whether trends were apparent indicating bias. We also conducted interviews of members of the Voting Section's hiring committee, CRT Human Resources (HR) staff, and leadership of the Voting Section and Division, including AAG Perez.

In Section II of this chapter we provide background information, including a description of the legal standards for hiring career attorneys. We also describe an incident involving expedited hiring of career attorneys during the transition period before the inauguration of a new administration in 2001, which forms a significant historical backdrop to this chapter, and we summarize the results of our prior investigations of politicized hiring in the Department. In Section III we describe the hiring procedures used in CRT during 2002 to 2011.

In Section IV of this chapter we present our factual findings regarding the hiring of experienced career trial attorneys in the Voting Section during the period from January 2009 to the end of December 2011. Nine new attorneys were hired into trial attorney positions in the Voting Section during that period pursuant to an external job announcement published in January 2010. We describe the recruiting preparations, the formation of the hiring committee, the evaluation of applications, and the qualifications of the newly hired attorneys.

We also present a detailed statistical evaluation of the hiring decisions, examining the characteristics of the 482 applicants for Voting Section positions as well as the hiring outcomes. In Section V we present the OIG's analysis, and in Section VI we present our conclusions.

II. Background

A. Legal Standards for Hiring Career Attorneys

The legal standards for hiring career attorneys differ from those that apply to political positions. Federal civil service law and Department policy prohibit discrimination based on political affiliation in hiring for career positions. In contrast, it is not improper to consider political affiliations when hiring for political positions.

The Civil Service Reform Act of 1978 (CSRA) establishes merit system principles for federal agencies to use when making personnel decisions. The CSRA requires agencies to adopt hiring practices for career employees so that "selection and advancement [are] determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity." 5 U.S.C. § 2301(b)(1). In support of these principles, the Act prohibits consideration of political affiliation in hiring for career positions:

> All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

5 U.S.C. § 2301(b)(2).

In addition, CSRA Section 2302 forbids "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action" from engaging in enumerated "prohibited personnel practices." *Id.* at 2302(b). The use of political affiliation as a criterion for considering applicants for career attorney appointments may violate several prohibited personnel practices. Section 2302(b)(1)(E) prohibits "discriminat[ing] for or against any employee or applicant for employment... on the basis of... political affiliation, as prohibited under any law, rule, or regulation." Section 2302(b)(12) of the CSRA also makes it unlawful to "take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title." As noted above, that section prohibits discrimination based on "political affiliation." 5 U.S.C. § 2301(b)(2).

A Department regulation also prohibits discrimination based on political affiliation:

> It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, political affiliation, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment.

28 C.F.R. Part 42.1(a), Subpart A.

The laws and regulation cited above do not define "political affiliation." Nonetheless, as the OIG stated in a prior review that examined politicized hiring practices within the Department:

> [I]dentifying candidates as "liberal" or "conservative" by the activities or organizations with which they are affiliated can be used as a proxy for political affiliation and thus can violate the CSRA's prohibition. Using ideological affiliation can also create the appearance that candidates are being discriminated against based on political affiliation. In addition, using ideological affiliation can violate the requirement that the government use hiring practices for career positions that ensure it identifies the best qualified applicants through fair and open competition.

See 5 U.S.C. §§ 2301 (b)(1) – (2).[159]

In a related review of politicized hiring within the Department, the OIG recommended that the Department amend its HR policies to clarify that career employees' political affiliations cannot be considered in hiring and that ideological considerations cannot be used as a proxy to discriminate on the basis of political affiliations.[160] In response the Department amended its HR Order to provide:

> [P]olitical affiliation may not be used as a criterion in evaluating candidates, and ideological affiliation or other factors cannot be used as proxies to discriminate on the basis of political affiliation. Illegal discrimination on the basis of political affiliation violates the merit-based

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[159] U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2008, publicly released on July 13, 2009) 6.

[160] U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program* ("SLIP Report")(June 2008) 102.

> principles governing federal employment for career employees, and undermines public confidence in the Department's mission.

DOJ Order 1200.1.

Consequently, the CSRA and Department policy prohibit using political affiliations, and Department policy prohibits using ideological affiliations as a proxy for identifying political affiliations, in assessing candidates for career attorney positions.

B. Expedited Hiring of Career Employees Throughout the Division during the 2000-2001 Transition

During the course of our larger investigation of the Voting Section for this review, we received allegations regarding the expedited hiring of attorneys and other career employees that took place in the Voting Section as well as other sections of CRT during the transition period between the contested election of November 2000 and the installation of the new administration's political appointees in CRT in 2001. Several witnesses told the OIG that in late 2000, following the contested presidential election, Division leadership in CRT communicated to the Sections that an expedited effort should be made to fill approximately 90 vacancies for career positions across the Division. These vacancies had become available in large part as a result of an increase in funding for CRT in the 2000 budget, but had not been filled as of the time of the election. Although events occurring more than a decade ago were not a central focus of our investigation, we found that widely held perceptions regarding these hiring decisions throughout the Division in late 2000 and early 2001 affected some witnesses' interpretations of the context of hiring decisions that were made more recently by the Voting Section. We therefore looked at these events as an important background to our investigation of more recent hiring decisions in the Voting Section.

On December 15, 2000, Voting Section Chief Joseph Rich stated in an e-mail to CRT's Director of HR and the Division's Executive Officer that the Voting Section had been allocated eight new positions and that "the front office wants our recommendations by 1/8." Rich indicated that the Voting Section wanted to fill its eight new positions with four attorneys and four non-attorneys. On December 19, CRT issued a vacancy announcement for attorney positions in the Voting Section, with a closing date of January 3, 2001. On December 23, the Saturday before Christmas and before the announcement closed, Rich interviewed 2 applicants for the positions, and Voting Section management interviewed at least 12 more attorney candidates during the period January 2 through January 5, 2001. On January 11, 2001, Rich made

his final decisions and extended offers to four attorney candidates, three of whom accepted.[161]

Several CRT officials involved in the hiring effort that occurred between November 2000 to January 2001, including the CRT Chief of Staff, two Voting Section managers, and two CRT HR executives, told the OIG that there was a concerted effort to hire personnel before the new administration began on January 20, 2001. Rich told us that although the hiring process had started "well before the election, . . . once the election came, probably the decision-making was speeded up so that people coming through the pipeline could [] get jobs before the new administration came out." Rich said he suspected that the Division leadership wanted to expedite the hiring process in order to fill the positions before the Republicans got into office. He also stated, however, that: "It wasn't all 'Just do it before the Republicans got in.'" Rich told the OIG that he wanted to fill the vacant positions before the change in administration because hiring usually pauses after a change in administration as the appointed personnel become acclimated to the Division, and the Voting Section had already commenced the hiring process and he did not want to start over again. Rich stated that he wanted to fill the positions because he anticipated a substantial amount of redistricting work coming to the Section in 2001 as a result of the 2000 census and therefore the Voting Section needed to "beef up" its personnel, particularly its non-attorney staff.

Rich also told us that there was a concern about what would happen with the unfilled positions in the new administration. He stated that Republican administrations typically did not enforce civil rights laws as vigorously as Democratic administrations and that the Voting Section wanted "to get good, strong civil rights enforcement people in there." Rich stated that candidates' political affiliations did not play a role in their selection, but he believed the incoming administration may not have liked the candidates the Section selected because some of them came from civil rights advocacy groups. Rich stated that the Voting Section "liked the people we had picked and we did not know what would happen to them in the next round."

Deputy Chief Robert Berman, who was a member of the Voting Section hiring committee at the time, also told the OIG that there was an effort to complete the candidate-selection process before the new administration began. He stated that the process was accelerated out of concern that Acting Division leadership in the first weeks of the new administration would be reluctant to make significant decisions like hiring selections. Berman stated that he never

[161] On January 12, 2001, then-Deputy AAG Loretta King e-mailed then-AAG Bill Lann Lee and Lee's Chief of Staff William Yeomans about her discussion with a Chief of a different CRT Section and his hiring efforts. King stated in her e-mail: "With respect to his atty [sic] hires, he won't have a recommendation to put forward until the end of next week. I told him that he risked losing his atty [sic] hires if he didn't get recommendations to us sooner."

got the impression that there was a concern about the type of candidate that the new administration would hire.

William Yeomans, who served as Chief of Staff in CRT at the time, and as Acting AAG during the first few months of the new administration until AAG Ralph Boyd was confirmed, told us that the Division was understaffed at the time and filling the positions before the new administration was "good government" because there was uncertainty about the positions with the change in administration, as the new administration could have issued a hiring freeze and moved the funds elsewhere. Yeomans told the OIG that he believed that the hiring at that time was based on merit and that there was a strong case for moving the hiring along during the transition period, given the concerns that the slots would be lost under the new administration.

The former Executive Officer of CRT who participated in the 2000-01 hiring process told the OIG that she believed that there was a rush to fill the slots before the change in administration, saying: "[B]ack during that time, the message was to push forward and hire as many – recruit and get them on board as fast as we could." When asked why there was a rush to fill the positions, she stated: "My conclusion was let's get them here before the new Administration comes on board." She also told the OIG that she concluded that the rush to fill the vacant slots arose from a concern about the difference in ideology between the outgoing and incoming administrations regarding the enforcement of civil rights laws, particularly that Democratic administrations tend to focus more on "traditional" civil rights enforcement, while Republican administrations had usually directed resources away from civil rights enforcement. She stated that she believed there was a push to bring in attorneys who were committed to enforcing the civil rights laws and had "demonstrated experience in supporting civil rights." She stated that "[i]t was a push to get the best people in that they could find that was [sic] committed to the mission of civil rights," and that in leadership's view the new administration might have a different idea of who would be the "best person."

The former Director of HR for CRT, who participated in the 2000-01 hiring, told the OIG that she also believed there was a rush to hire people into CRT before the end of the administration. She stated that during a management retreat after Election Day in 2000, a political appointee from Division leadership – she wasn't sure who – "threatened" to take control over the hiring if the Section Chiefs failed to fill the slots quickly and that the Section Chiefs "got the message loud and clear."[162] According to the Director,

[162] During her OIG interview, the former Director told us the management retreat was on the day after the election, but also stated that she thought the meeting took place in the context of "disappointment" over the results of the election, which might suggest that it occurred as late as December 2000.

CRT hiring "had never happened like that before," and she believed that those hiring efforts were improper because "[r]eally, what I think they wanted to do was just, you know, fill the division with people who would continue the fight, and knowing full well that those weren't the kind of people that the new front office would want to hire." She said that she felt obligated to tell Division leadership that although filling all of the vacant positions before the inauguration was not illegal, it was not a good idea. She stated:

> I don't remember who I talked to, but I remember saying, you know, I don't think we should fill every vacancy because that's going to leave no flexibility for the new administration and that's going to cause – it's going to cause hardship on the section chiefs – when – because the new administration is going to come in and not trust anybody because they're going to know what happened – which is exactly what eventually happened, you know.

She told the OIG that no one paid attention to her concerns.

The new administration's AAG, Ralph Boyd, was confirmed by the Senate and took office with his Deputy AAG, Robert Driscoll, in mid-2001. Boyd and Driscoll told the OIG that they learned about the expedited hiring that occurred in the late days of the prior administration. Driscoll stated that he concluded from his review of materials collected in response to a congressional inquiry that the CRT career personnel were trying to "stack the deck" with employees who held progressive views on civil rights enforcement.[163] Driscoll stated that he recalled that the Division's Section Chiefs and possibly Yeomans "blanketed" civil rights advocacy groups with e-mails stating that the Division was hiring. Boyd told the OIG that he was irritated at the pre-inauguration hiring, which he considered to be "gaming the system." He said it bothered him because the career staff did not trust the new administration to make "honest calls" on who should work in the Division, and it was evidence of an "existing orthodoxy," which he opposed irrespective of its orientation. In addition, Boyd stated that those hiring efforts reinforced Boyd's concern about the lack of ideological diversity in the Division.

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[163] In April 2001, Representative James Sensenbrenner wrote a letter to then-Attorney General John Ashcroft expressing concern about reports of expedited hiring in CRT during the transition period and requesting information from the Department. The Department's response, which was prepared prior to Boyd and Driscoll taking office, reported that in total, between November 7, 2000, and February 15, 2001, the Division made employment offers to 31 individuals, including 17 attorneys and 2 civil rights analysts, who were not working in the Department at the time. The response attributed the expedited hiring to the CRT budget increase in Fiscal Year 2000 and 2001.

Despite Boyd's and Driscoll's concerns about the transition-period hiring, the Division leadership did not conduct further investigation or take further action regarding those events. Driscoll stated that he concluded that CRT could hire staff to fill vacancies, that rushing to fill positions prior to the end of an administration violated no policies or procedures, and that "you were not going to get any traction with the career staff by re-litigating these issues." He also told the OIG that he never discussed this 2000-01 hiring with Yeomans, Rich, or other section chiefs because he was a new political appointee and had not previously worked in Washington, D.C., and therefore he assumed that "this was the way the game was played."

We concluded that there was an effort by the outgoing Division leadership in CRT during the 2000-2001 transition period to fill vacant positions in various CRT Sections, including the Voting Section, on a highly expedited basis so as to be completed prior to the change in administrations. In the Voting Section, this effort was supported by Section Chief Joseph Rich and others. The way this hiring effort proceeded created the perception, shared by senior career administrative officials in CRT as well as the incoming political leadership of the Division, that at least part of the motivation for this activity was to hire attorneys who favored the enforcement philosophy of the outgoing administration and to keep the hiring decisions out of the hands of the incoming administration because of concerns about its enforcement philosophy.[164]

C. Prior OIG Investigations of Politicized Hiring in the Department

The OIG previously investigated allegations of politicized hiring in the Department, including in the Division. In 2008 and 2009, the OIG and OPR jointly issued three reports substantiating allegations that Department officials unlawfully relied upon political and ideological considerations when making

[164] After reviewing a draft of this report, the Department stated that the increase in hiring in late 2000 and early 2001 "was consistent with efforts over several years to secure additional funding for CRT and then make use of available budget resources and to fill vacancies where possible." The Department stated that the accelerated hiring process was not motivated by fears about the ideology of the incoming administration but rather as a "necessary component to secure additional resources" for the Division. We do not question the longer-term effort of Division leadership to obtain resources for CRT, which apparently began significantly before the election. After the election, however, Division leadership had reason to believe that incoming leadership might not share its views on the appropriate level of resources to be devoted to the Division or its individual Sections. Yet the Division accelerated the effort to complete the hiring during the transition period, which created the perception that the outgoing administration sought to restrict the ability of incoming leadership to make changes in priorities and resource allocations. We believe this perception likely exacerbated distrust between the incoming Division leadership and the career staff.

employment decisions for the Department's Honors Program and SLIP, CRT, and other career attorney positions.[165]

Our investigation of CRT focused on allegations that Bradley Schlozman, former DAAG and Acting AAG, inappropriately considered political and ideological affiliations when making hiring and other personnel decisions affecting career attorneys in the Division.

Our statistical review of Schlozman's hiring decisions, based on data gathered from resumes, application materials, e-mails, and interviews, showed that of the 99 attorneys he hired, 63 had identifiably Republican or conservative affiliations, 2 had identifiably liberal affiliations, and 34 had unknown affiliations.[166] These ratios were similar in the subset of 18 attorneys that Schlozman hired into the Voting Section: 11 had identifiably Republican or conservative affiliations, none had identifiably Democrat or liberal affiliations, and 7 had unknown affiliations.[167]

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[165] These reports are: U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program* (June 2008); U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2008, publicly released on July 13, 2009); and U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General* (July 2008). The reports are available at: http://www.justice.gov/oig/reports/index.htm (accessed March 8, 2013).

[166] We explained the classification methodology for analyzing the ideological makeup of the attorneys analyzed in the SLIP Report as follows:

> We recognize that these determinations are not precise and that categorizing organizations as liberal or conservative can be somewhat subjective. . . . For example, we categorized as "liberal" organizations promoting causes such as choice in abortion issues, gay rights, defense of immigrants, separation of church and state, and privacy rights. Examples of organizations we considered liberal include Earthjustice, the American Civil Liberties Union, Planned Parenthood, Lambda Law Association, and Ayuda. We categorized as "conservative" groups promoting causes such as defense of religious liberty, traditional family values, free enterprise, limited government, and right to life issues. Examples of groups we considered conservative include the Federalist Society, the Alliance Defense Fund, the Christian Legal Society, and the Family Research Council. In reviewing candidates' applications, we considered a candidate's affiliations to be "neutral" if the organizations listed did not have an apparent liberal or conservative viewpoint, or if the candidate listed affiliations with both liberal and conservative organizations.

SLIP Report at 19, n.18.

[167] Schlozman provided the OIG with the names of several individuals he hired into the Voting Section who he said he "knew or strongly suspected" were liberals. We compared the names Schlozman provided with the information developed in our prior investigation and determined that it was not apparent from these individuals' resumes, applications, or other available information that they were liberals or Democrats. One of the individuals identified by

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This statistical evidence was supported by extensive e-mails documenting Schlozman's preference for hiring conservative attorneys and his desire to marginalize attorneys he perceived to be liberal or move them out of the Sections he was supervising. These e-mails included discussions about personnel in the Voting Section. For example, in an e-mail on July 15, 2003, to a former colleague, Schlozman wrote, "I too get to work with mold spores, but here in Civil Rights, we call them Voting Section attorneys." As part of the same e-mail exchange, on July 16, 2003, Schlozman wrote, "My tentative plans are to gerrymander all of those crazy libs right out of the section." Schlozman and Tanner (during an earlier review) told the OIG that they believed that the quality of the Voting Section's work suffered from the fact that the staff, in their view, was overwhelmingly liberal, and that Schlozman's hiring decisions reflected his desire to create more ideological diversity within the Voting Section.[168]

Based on the statistical evidence combined with the overwhelming corroborating documentation, we concluded that politicized hiring had occurred in the Division during Schlozman's tenure in the Division from 2003 to 2006. We concluded that Schlozman considered political and ideological affiliations when hiring and taking other personnel actions relating to career attorneys, in violation of federal law and Department policy, and that his actions constituted misconduct.

III. CRT Hiring Procedures from 2002 to 2011

Over the past 10 years, CRT has modified its hiring procedures for experienced attorneys several times.[169] Prior to 2002, career staff in the various CRT Sections managed the hiring process with the assistance of the Division's HR Office. While authorization was needed from the Division's Office

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Schlozman was a self-described Republican who listed Republican affiliations on her resume. Schlozman also listed three individuals he described as liberals who he promoted to management positions in the Section: Section Chief John Tanner, Principal Deputy Chief Christopher Coates, and Special Litigation Counsel Chris Herren. We did not review these individuals' resumes or applications to determine how they would have been classified in the prior investigation. However, we note that in another context, Schlozman identified Coates as a "true member of the team" which we believe was intended to convey that Coates was conservative. *See* Chapter Four, Section V.C.1.a., page [155].

[168] Schlozman told us in a letter written in response to a review of a draft portion of this report that his low opinion of some Voting Section career attorneys was based upon his view that some were unprofessional and insubordinate and had engaged in partisan conduct.

[169] The Department hires career attorneys either as entry-level attorneys through the Honors Program, or laterally as experienced attorneys. According to the website of the Department's Office of Attorney Recruitment and Management (OARM), experienced attorneys must have no less than one year of experience following graduation from law school, though individual positions may require more years of experience.

of the AAG to fill a vacant position, once that approval was obtained, the Section Chief or his designee reviewed the applications and decided which candidates to interview without Division leadership involvement. After completing interviews, the Section Chief made a hiring recommendation to the Division leadership. According to CRT staff, these recommendations typically proved non-controversial and the Division leadership routinely approved them.

Beginning in 2002, the Division leadership became more involved in the hiring process. Witnesses told us that this increased involvement was prompted at least in part by concerns about hiring practices during the 2000-2001 transition period, as discussed above. In a memorandum dated February 25, 2002, CRT announced a "new attorney hiring process" designed to "create a centralized system of recruitment and selection for experienced attorney positions."[170] Under the new policy, instead of allowing Section Chiefs to select which candidates to interview, DAAGs made this decision. The Section Chiefs interviewed the applicants that the DAAGs selected. In some cases the Section Chiefs were permitted to identify and interview other candidates from the applicant pool. Section Chiefs made their hiring recommendations to their supervising DAAG, who forwarded the Section Chief's and the DAAG's own recommendation to the AAG for review and approval.

In December 2003, the AAG further centralized Division hiring procedures, adding a requirement that DAAGs obtain the concurrence of the Principal DAAG (a political appointee) when seeking approval to hire from the AAG and when selecting candidates for the Section Chief to interview. In addition, Section Chiefs were prohibited from obtaining their own copies of resumes and had to review applications in the Division's HR Office.

Our earlier investigation of politicized hiring in CRT, which examined all Sections in CRT from 2001 to 2007, found that political and ideological considerations did not influence hiring and personnel decisions except in those sections that Schlozman supervised. Our report found that Schlozman relied upon political and ideological considerations when making hiring and other personnel decisions in the Voting Section and the four other sections he supervised.[171] The evidence developed during our earlier investigation also showed that the AAGs and Principal DAAGs who supervised Schlozman failed to exercise sufficient oversight to ensure that Schlozman did not engage in inappropriate hiring and personnel practices.

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[170] Executive Officer, Civil Rights Division, memorandum to Section Chiefs, New Attorney Hiring Process, February 25, 2002.

[171] Schlozman also supervised the Special Litigation, Employment Litigation, Criminal, and Appellate Sections. This report focuses on the Voting Section, and thus this chapter concerns hiring practices in the Voting Section and does not examine hiring practices in other sections of CRT.

The issues identified in CRT's hiring process eventually resulted in the implementation of numerous reforms. In March 2009, CRT formed a working group of Section Chiefs and the Director of its Office of Professional Development to draft new policies for hiring experienced attorneys for career positions and to govern attorney promotions. The group issued a report in September 2009 that recommended returning primary decision-making on hiring matters from the Division leadership to the career staff. This recommendation was accepted by AAG Perez, who issued a new policy on hiring experienced attorneys in December 2009.[172]

The new hiring policy stated that it was formulated "[t]o ensure a fair, transparent, and merit based hiring process," and required each Section Chief to establish a hiring committee of at least three members, including the Section Chief and at least one non-manager attorney, for each vacancy announcement. Under the policy, hiring committee members must review applications relative to the qualifications identified in the vacancy announcement and recommend candidates for interviews to the Section Chief. Applicants that the Section Chief selects for interviews must be interviewed by no fewer than three hiring committee members. After interviews conclude, the policy requires the Section Chief to submit hiring recommendations, with input from members of the hiring committee, to the AAG or his designee for review and approval. If the AAG or designee opts to reject recommended candidates, the decision must be made in writing.

The hiring policy also emphasized that hiring in CRT is based on merit-based principles and should never involve discrimination based on race, age, political affiliation, or other prohibited factors. Members of CRT hiring committees are required to attend training on merit system principles, prohibited personnel practices, and hiring and interviewing policies, and must certify that they will comply with applicable requirements.[173]

In January 2010, AAG Perez supplemented the new hiring policy with a lengthy guidance memorandum on Division hiring procedures for career experienced attorneys that was sent to Section managers and hiring committee members.[174] The memorandum addressed numerous hiring issues, such as sensitive interview questions concerning disabilities and confidentiality when conducting reference checks. The memorandum specifically instructed

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[172] Thomas E. Perez, Assistant Attorney General, memorandum to Civil Rights Division Employees, Civil Rights Division Experienced Attorney Hiring Process, December 3, 2009.

[173] CRT also provides training on merit system principles and EEO during its Supervisor and Professionalism training courses.

[174] Thomas E. Perez, Assistant Attorney General, memorandum to All OAAG Attorneys, et al., Guidance for Civil Rights Division Managers Regarding Hiring for Career Experienced Attorneys, January 20, 2010.

interviewers "as a general rule" to avoid asking questions that could be construed to seek information about the applicant's political affiliation or views. It also identified desirable skills and experience for use in establishing qualifications to guide the Sections' selection criteria. These include "[d]emonstrated academic achievement," "[d]emonstrated interest in the enforcement of civil rights laws," and "[s]ubstantive knowledge and expertise in the laws, rules and regulations applicable to the work of the section," among 10 other factors.[175]

AAG Perez also issued guidance to the Division on December 10, 2009, and July 13, 2010, on the need to follow merit system principles in hiring and avoid "prohibited personnel practices."[176] We found that comparable guidance was issued by AAG Wan Kim in June 2007, by Acting AAG Grace Chung Becker in August 2008, and by Acting AAG Loretta King in early 2009.

In our interview of AAG Perez, he said that his main concern with hiring when he returned to the Department in October 2009 was to reestablish the role of career staff.[177] In testimony before the Senate Judiciary Committee in September 2011, Perez said that he was "quite confident" that merit-based hiring had been restored in CRT, and that the Division hires attorneys with civil rights backgrounds because relevant experience is very helpful.

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[175] The 10 factors are: (1) skill and experience developing and handling matters of complexity and significance; (2) written and oral communication skill and experience, including producing written work product that is accurate, well organized, thorough and free of typographical and grammatical errors; (3) oral advocacy, trial and presentation skill and experience, including effectively representing agencies and/or clients in court, administrative and regulatory proceedings, and/or as part of outreach efforts, training or other presentations; (4) research skill and experience; (5) negotiation skill and experience, including effectively representing agencies and/or clients in mediation and settlement negotiations; (6) skill and experience working cooperatively and productively with third parties, including charging parties, witnesses, respondents, opposing counsel, court personnel and the staff of other agencies; (7) skill and experience working cooperatively and productively with supervisors, colleagues, and staff; (8) level of supervision required, including the ability to complete tasks with the level of supervision commensurate with the GS-level of the vacant position; (9) skill and experience supervising the work of attorneys and staff; and (10) availability and willingness to travel. According to the guidance memorandum, these factors were not listed in order of importance and may not apply to every attorney vacancy in CRT.

[176] In response to a draft of this report, the Department stated that CRT has implemented additional safeguards, including: issuing written hiring policies that require public and Section-specific postings of all positions and that make clear the minimum qualifications; instituting hiring committees; requiring that written hiring recommendations be submitted to the Office of the Assistant Attorney General (OAAG); requiring written explanations if the OAAG overrules a recommendation; prohibiting Internet searches of applicants; creating a system that allows any interested person or organization to sign up to receive attorney vacancy announcements automatically; and requiring mandatory training for all employees involved in the hiring process.

[177] Perez previously served in CRT at the Department as a prosecutor in the Criminal Section from 1989 to 1995, and as a DAAG from 1998 to 1999.

Attorney General Holder told the OIG that he has taken a "hands off approach" to hiring other than to set out general terms to restore hiring procedures to the way they existed when he was Deputy Attorney General.[178] He said that he believes that hiring is something that the career staff should oversee, subject to directives such as his diversity initiative.

IV. Hiring of Career Trial Attorneys in 2010 in the Voting Section

A. Hiring Procedure

The Voting Section hired nine experienced attorneys for career trial attorney positions between January 20, 2009, and December 31, 2011, all of whom were hired following a single external job announcement that opened for one month starting on January 22, 2010.[179]

1. Recruiting Preparations and Formation of the Voting Section's Hiring Committee

According to CRT and Voting Section managers, by the end of 2009 the Section was critically short-staffed and needed to hire additional attorneys.[180] DAAG Fernandes told the OIG that she recalled that the staffing situation in the Voting Section was "stark" due to the previous loss of many mid-level attorneys and that she believed that only four trial attorneys remained who had the necessary experience to "run cases." We determined that the average number of attorneys from 2003 through 2008 was approximately 36. During

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[178] Attorney General Holder served as Deputy Attorney General of the Department from June 1997 to January 2001.

[179] Our review focused on the hiring of experienced trial attorneys into the Voting Section between January 20, 2009 and December 31, 2011, in response to an external job announcement. These made up the substantial majority of all attorney hires during that period and they were all hired according to a common procedure, described in this section. Our analysis excluded attorneys who transferred to the Voting Section from other components of CRT. We did not evaluate the hiring of entry-level attorneys through the Honors Program. Hiring decisions under this program are made at a Division-wide level using a different procedure than the one that the Voting Section used for hiring experienced trial attorneys. Two Honors attorneys selected by CRT during 2009-2011 were assigned to the Voting Section. (Two other Honors attorneys who were hired in 2008, prior to the period of our review, began working in the Voting Section in 2009.) In addition, our review did not evaluate the selection of Deputy Chiefs and Special Litigation Counsels during this period. Most of these appointments were promotions of attorneys already employed by the Voting Section, although two (one Deputy Chief and one Special Litigation Counsel) were hired from outside the Section.

[180] A hiring assessment that the Voting Section completed in November 2009 supported this view and provided justification for the assignment of additional attorneys to the Section. By that time, CRT had obtained funding for 102 new positions in the Division.

that period the Voting Section lost 31 trial attorneys, including 9 in 2005. In November 2009, the Voting Section had 38 attorneys.[181]

We were told that concerns over expected increases in workload related to redistricting and anticipated litigation further amplified the perceived need among CRT managers to hire attorneys in the Voting Section. Section Chief Herren said that he expected "a crush" of litigation following completion of the census in 2010. A Voting Section Deputy Chief, SaraBeth Donovan, also told the OIG that the demands on the Section were escalating due to redistricting and other initiatives and therefore it was necessary to hire experienced attorneys who could "hit the ground running" and handle trial work.

Fernandes told us that in light of these circumstances, she worked to create new attorney positions in the Voting Section and asked Herren to develop a list of alumni who had left the Section in the recent past as a way to demonstrate to AAG Perez that substantial talent had been lost that needed to be replenished. Fernandes stated that she remembered thinking to herself that there may be former staff who wanted to return to the Section now that the environment was not so "toxic." Herren told the OIG that he believed that Fernandes used the term "diaspora" to describe the departure of staff during the eight years of the last administration. He also stated that staff in the Section prepared a list of alumni for Fernandes but he could not recall its purpose, though he believed it could have been to persuade AAG Perez that the Section needed more attorneys.

Our review of the list that Herren provided to Fernandes in November 2009 showed that it included 25 former Voting Section attorneys who previously had left the Section. The list, however, omitted 29 former Section attorneys who had left the Section since January 2001, including 8 attorneys who were widely perceived to be conservatives.[182] A Voting Section Deputy Chief, Rebecca Wertz, said that she may have worked on the list and that it included former experienced attorneys who were still in the Washington, D.C., area and who might have been interested in coming back to the Voting Section. Wertz stated that she was "fairly sure" that the "conservative" alumni that the OIG asked about would not have been interested in returning and therefore were not included on the list.

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[181] Three of these attorneys were serving details outside of the Voting Section.

[182] These attorneys were members of organizations such as the Federalist Society and the Republican National Lawyers Association. In response to a draft of this report, Herren stated that the list he provided to Fernandes included one self-identified Republican. This attorney was hired during the second Bush administration and worked in the Voting Section for only a few months.

Fernandes told the OIG that she never would have directed that conservatives or staff hired during the prior administration be excluded from the list. However, she felt that staff who had been "pushed out" by the prior administration would have been more likely to return to the Section if the "environment" in the Section were different. She described the individuals who left as those that the prior administration thought were not "good Americans," a phrase Schlozman used to describe his preferred hires, or people that they could trust, and so the prior Division leadership wanted to make their lives "hell" and push them out of the Section.

Another Deputy Chief, Berman, contributed to the list and said that it identified attorneys who had worked in the Section during a 5-year redistricting cycle (such as 2000-2004). Herren stated that the list "never went anywhere" and was somewhat of a "pointless exercise." Two attorneys on the list applied for the 2010 trial attorney positions and both were hired. We also found that Voting Section staff contacted persons outside the Section to notify them of the vacancies, including former Voting Section attorneys who were on the list. However, we did not find sufficient evidence to conclude that the list Herren provided to Fernandes was actually used in recruiting or selecting new attorneys in the Voting Section.

By early January 2010, AAG Perez approved Fernandes's and the Voting Section's request to hire additional trial attorneys and to post a hiring advertisement. Herren told the OIG that he received a draft advertisement from the Division's HR Office and that Division staff revised it. The final announcement identified a limited number of "required qualifications": three years post-J.D. experience, excellent professional judgment and interpersonal skills, and "substantial litigation experience." The announcement also set forth "preferred qualifications" that described other skills related more particularly to voting litigation:

> (1) substantive knowledge of the Voting Rights Act (VRA) and other statutes enforced by the section; (2) familiarity with the various analytical approaches utilized to review voting changes under Section 5 of the VRA; (3) experience investigating and/or litigating voting rights or civil rights cases; (4) federal judicial experience; (5) experience serving as the lead attorney in federal court cases; (6) familiarity with statistical methodologies used in civil rights cases; and (6) fluency in Spanish, Chinese, Korean, or Vietnamese languages.

Academic achievement was not identified as a required or preferred qualification. Herren told the OIG that he did not purposefully omit academic achievement from the hiring announcement, and he could not think of a circumstance where it would not be a preferred qualification.

The hiring announcement was published on the USAJOBS website on January 22, 2010. It also was posted on the Department and CRT Internet and Intranet sites. According to the Division's HR staff, organizations or persons who had notified HR that they wanted to receive notification of CRT job announcements, or organizations or persons who otherwise had been identified to HR for this purpose, received e-mail messages alerting them to the experienced trial attorney advertisement. An HR staff member told the OIG that the Division created this "outreach" list in 2009 based on a contacts list that OARM developed for its Department-wide recruiting efforts, and the Division has maintained its own "outreach" list since that time. CRT also added an invitation on its employment website for organizations to sign up to receive e-mail announcements of job advertisements, and requested staff to recommend groups to include on the list.[183] The Division's HR Department updated its "outreach" list over time.[184] CRT staff told us that if they received a request to add an organization to the list, the organization would be added.

We conducted an analysis of CRT's "outreach" list, which in February 2010 contained contacts at approximately 150 organizations. The large majority of the organizations on the list were bar associations and law schools. We determined that most of the organizations on the list were neutral or non-ideological. Approximately 10 of the organizations on the list are generally considered to be "liberal" and only 1 (the Becket Fund for Religious Liberty) is generally considered to be "conservative."[185]

In addition to the notifications sent by the HR Department, AAG Perez sent a Division-wide e-mail in December 2009 requesting staff to "inform your friends and networks" about vacant positions. Our review of Voting Section e-mails and information provided by Herren revealed that Herren sent e-mail notifications to a variety of individuals and organizations, many of whom had no readily apparent ideological or partisan affiliation. Herren sent notifications to at least 11 individuals from "liberal" civil rights organizations, including the American Civil Liberties Union (ACLU), the Mexican American Legal Defense and Education Fund (MALDEF), the National Association for the Advancement

[183] The invitation for organizations to enroll in this service is found at: http://www.justice.gov/crt/employment/ (accessed March 8, 2013).

[184] The HR staff member who maintained CRT's outreach list told us that organizations with outdated contacts were removed from the CRT outreach list if efforts to update the contact proved unsuccessful or if the organization was not interested in being included on CRT's list.

[185] A copy of the 2010 outreach list is attached to this report as Appendix B. In evaluating whether an organization was "conservative" or "liberal," we followed the same procedures we utilized in our SLIP Report, described above in footnote 165. We also used this classification methodology for analyzing the ideological makeup of the applicant pool. As we recognized in our prior report, these determinations are not precise and categorizing organizations as liberal or conservative is subjective. Therefore, the statistics included in this chapter are rough approximations as opposed to precise statistical measurements.

of Colored People Legal Defense and Education Fund (NAACP LDF), and the Lawyers' Committee for Civil Rights under Law (LCCR).[186] We found that Herren did not send any e-mail notifications to "conservative" civil rights organizations. Herren told us he attempted to reach a wide audience and that he did not pick to whom he sent the ads based on ideology.[187]

Herren told the OIG that staff from the Division's HR Department and the Division's Employment Counsel instructed him to circulate the announcement broadly and he sent it to the "normal contacts for the work that we do." Herren stated that he was striving to follow the directions he received from the Division and to widely circulate the hiring announcement, which he said he did by contacting persons who did election work and by sending it to persons who maintained the blogs that they read. Herren stated that circulating the announcement was intended to broaden the applicant pool and that his goal was simply to ensure that people knew about the job openings and that it got wide distribution among the people that the Section regularly dealt with.

Shortly following publication of the hiring announcement, the Voting Section formed a 7-person hiring committee to evaluate applications, conduct interviews, and make hiring recommendations. It consisted of Herren, two deputy chiefs, two senior attorneys, and two junior attorneys. During our interviews of the hiring committee members, we learned that one member previously was active with a local Republican Party organization, and another had paid dues to the American Constitution Society and had worked for a Democratic Congressman.[188] Another told us he was a Democrat. Three of the hiring committee members did not identify partisan or ideological affiliations.[189]

Our review of Voting Section documents also revealed that, prior to becoming hiring committee members, two of the seven members had used the Department's e-mail system to express views that were hostile to Republicans and political conservatives, although they were not related to hiring or other

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[186] In the interest of full disclosure, and as indicated in his nomination filings, we note that during the period from November 2009 to April 2012, Inspector General Horowitz served on the Board of the LCCR. The position was not compensated. He resigned from the board upon becoming Inspector General. During his tenure on the board he did not refer or recommend any LCCR employees for positions in the CRT or elsewhere in the Department.

[187] The CRT website states "Sections may also distribute announcements to additional organizations who may know of qualified candidates for a particular vacancy announcement." *See* http://www.justice.gov/crt/employment/ (accessed March 8, 2013).

[188] We indicated in the SLIP Report that the American Constitution Society is generally considered to be a liberal organization. SLIP Report at 20.

[189] The seventh hiring committee member retired before we asked about these affiliations.

personnel decisions within the Voting Section. For example, one of these two attorneys, Carson Poole (the member who told the OIG he was a Democrat) wrote: "[S]omehow whenever a republican says he or she is doing something because of a concern about a disadvantaged group, my antennae go up. [I] can't help it." Poole sent numerous other e-mails reflecting his political views prior to becoming a committee member.

We asked Poole whether, based on the totality of his e-mail commentary, he believed someone could question his objectivity. Poole stated that he did not believe so. He told the OIG that he did not "take action" based on ideology or political affiliation. He said that if a Republican applies for a job, you review the applicant's qualifications and consider what the law requires. He stated that the views expressed in the e-mails he sent had to be evaluated in the context of how Schlozman and others in Division leadership during the prior administration had politicized the Voting Section and had done things that he felt were not appropriate for Department attorneys. He also discussed his admiration of CRT's leadership during the Reagan Administration, which he described as "very conservative," and said that they conducted themselves professionally.

When we asked Herren about Poole's e-mails (he was a recipient of some of them), he said that Poole had a lot views that are hostile to a lot of people and that Poole had a "fair amount of disdain" for both conservatives and liberals. Herren said, however, that he still had confidence that Poole would treat applicants fairly and that Poole's prior dealings with Republican and Democratic elected officials in very sensitive cases did not raise concerns about his judgment.

We did not find any e-mails, notes, or other evidence that any of the members of the hiring committee discussed their political views or the political views of applicants in connection with their work on the hiring committee.

Before commencing their work, each of the hiring committee members completed mandatory training on the Division's hiring policies. They also signed a certification agreeing to abide by the Division's policy on merit system principles and prohibited personnel practices, which provides in pertinent part:

> [P]olitical affiliation cannot be considered as a criterion in evaluating candidates, and ideological affiliation or other factors cannot be used as proxies for determining political affiliation. Discrimination based on political affiliation violates the merit-based principles governing federal employment for career employees, and undermines public confidence in the Division's mission.

2. Evaluation of Applications

The hiring announcement closed on February 22, 2010, and resulted in the submission of 482 applications. The hiring committee members began their evaluation of the applications by arranging them alphabetically and dividing them into 6 groups of approximately 80 each, with each hiring committee member (except Herren) being assigned 1 of the groups of 80 for initial review. Herren told the OIG that he asked the hiring committee members "to make the first cut" by identifying applicants who "had a background in the work of the Section." He said he did not believe that he defined this background in a particular way.

The hiring committee used a spreadsheet to record information about the applicants that reflected in part the qualifications from the hiring announcement. Herren said that the purpose of the spreadsheet was to try to come up with a set of criteria that would tell hiring committee members something about applicants who might be interested in the Section's work and would remain with the Section for an extended period. The final version of the spreadsheet included 10 criteria: graduation year, language fluency, years of litigation experience, judicial clerkships, voting experience, prior work for the Department, prior work for the Civil Rights Division, election monitoring experience, experience with Voting Rights statutes, and "general civil rights/public interest experience."

Four of the seven hiring committee members told the OIG that the most important factor in their consideration of applications was litigation experience, especially experience involving the statutes that the Voting Section enforces, and a fifth described this factor as "very important." Herren stated that voting litigation experience was "extremely important" to the hiring committee's evaluation of applications because the work that the Section performs is some of the most complex in the Division and that it was helpful to have staff who were experienced working with the statutes that the Section enforces.

We asked hiring committee members about their use of the "general civil rights/public interest experience" criterion in their evaluation of applications. Herren stated that its purpose was to identify people who had some background or interest in civil rights or public interest work that might be helpful. Herren said that the Section received applications from tax lawyers, investment bankers, and others "who are clearly just looking to get into government," and that he could not see how they would have an interest in the Section's work.[190] Another hiring committee member told the OIG that the fact

[190] In response to a draft of this report, Herren elaborated that some of the people who applied "had submitted an application without anything indicating any experience, interest or background in voting, civil rights or public interest work and without crafting something tailored to our job (including no cover letter tailored to our job)." According to Herren, he "most

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that an applicant had experience in or had shown an interest in civil rights work was "a plus," but it was not "the beginning and the end." Two committee members told us that attorneys with "civil rights/ public interest" experience may be better able to work with the communities that Voting Section staff meet with in their work.

Our examination of the hiring committee's spreadsheet showed that "general civil rights/public interest experience" was used by the hiring committee to capture a diverse array of experiences, including policy and/or legal work on behalf of American Indians, prisoners, criminal defendants, immigrants, pro bono clients, and disadvantaged persons. We found, however, that "public interest experience" and "general civil rights experience" unrelated to the investigation or litigation of cases were not criteria in the Section's vacancy announcement. CRT's hiring policies require that the Section's selection criteria must "parallel" the qualifications identified in the vacancy announcement.

Two other hiring committee members responded that they looked for work experience in the applications that reflected "a commitment to civil rights" or public service. We asked how this commitment contributed to the success of a litigator in the Voting Section. Three of the hiring committee members said that they believed that such an applicant would be more committed to the Section's work and would be more likely to remain in the Section for a longer period of time. They also stated that prior civil rights and public interest work made an applicant better suited to work in sensitive situations with citizens from minority communities or those who had been disenfranchised. However, one hiring committee member stated that he was not sure that having such a commitment to civil rights made the applicant more qualified or capable of successfully performing voting litigation work.

We also asked hiring committee members about how they viewed experience working for civil rights groups such as the ACLU. One member stated that he viewed the experience as "generally positive." Four other members stated that it depended on the work the applicant performed for the organization, and that prior experience that involved litigation was especially helpful.

Additionally, we asked about the hiring committee's review of applications that indicated Republican or conservative affiliations. Herren told the OIG that he would not review an application that included Federalist Society membership differently than other applications, and that he had

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definitely did not seek to make a categorical point that persons who start out as tax attorneys (or any other kind of attorneys) are just looking to get into government when they apply for our job announcements."

previously recommended hiring one attorney who "was as Federalist Society as they come," and that he was pleased to work with the person. He said that he is confident based on what he knows about the hiring committee members and their deliberations that they did not consider political or ideological factors when they made their hiring recommendations.

Other hiring committee members unanimously stated the same belief and that the resumes of Republicans or conservatives were treated fairly. The sole self-identified Republican on the hiring committee told the OIG that in this person's view, the hiring committee functioned in an ideologically neutral way and that politics and ideology were not part of the hiring committee's deliberations.

Poole also stated that he would not review an application that included Federalist Society membership differently than other applications. Poole also said that an application from someone who is known to be a Republican would not be viewed in the Voting Section with skepticism. He said "there are people in the section who are Republicans and who are good lawyers and write good briefs and who take good positions."

After hiring committee members completed inputting data for the 482 applicants into the spreadsheet in early March 2010, they each identified their preferred candidates from the roughly 80 resumes they had individually reviewed, designating them "top applicants." All hiring committee members then reviewed the applications in the "top applicant" pool, which totaled 77. Members then prioritized these applications and further narrowed the field to the 24 candidates who were invited for interviews.[191] Three of the candidates who were invited to interview withdrew from consideration, so that a total of 21 candidates were actually interviewed.

Before and during the period when the hiring committee was preparing to conduct interviews of these 21 candidates, members of the hiring committee received unsolicited resumes for several candidates who already had applied as specified in the hiring announcement, as well as recommendations on behalf of certain candidates from representatives of liberal civil rights organizations and other acquaintances, such as judges and attorneys in the Department. According to CRT's Employment Counsel, CRT policies do not prohibit hiring committee members from receiving unsolicited resumes or recommendations on behalf of candidates who have applied for posted vacancies. CRT hiring policies require experienced attorneys to be hired in response to vacancy announcements and prohibit receipt of unsolicited resumes in the absence of

[191] Hiring committee members identified 23 applicants to interview from the 77 identified as "top applicants." One additional applicant who was not included in the list of the 77 "top applicants" was also invited to be interviewed.

such announcements. Recommendations also must be based upon personal knowledge of the applicant's abilities.

Herren and other hiring committee members who received the unsolicited resumes or recommendations forwarded the communications to all other hiring committee members for their consideration. Herren and another hiring committee member also saved unsolicited resumes and recommendations with the name of the submitter on a computer shared drive that the hiring committee established for use during the hiring process so that the other committee members could review these materials.

Herren told the OIG that he sent the resumes and recommendations that he had received to all of the hiring committee members because he wanted to be transparent with them. He said that it was not his intention to give any of these candidates elevated consideration, and that he did not believe that the hiring committee's receipt of this information affected their deliberations. We determined that the hiring committee received unsolicited recommendations for approximately 30 applicants. Three of these applicants were eventually hired. These candidates submitted applications according to the instructions provided in the Voting Section's hiring announcement. The recommendations highlighted their voting litigation experience and were received from a representative of a liberal civil rights group, a supervisor in another component of the Department, and an attorney in the Voting Section. We found no evidence that the hiring committee's procedures for dealing with unsolicited recommendations violated any CRT policies or introduced any partisan bias into its recommendations.

The hiring committee started interviews of the 21 applicants in mid-March 2010 and concluded them in June. Candidates met with a panel consisting of three members of the hiring committee, and separately with Herren and Wertz. Prior to starting interviews, the hiring committee developed a common set of interview questions.

Our review of notes taken during the hiring committee's deliberations following the interviews showed that the hiring committee was keenly focused on the candidates' voting litigation experience and substantive knowledge of voting rights. The notes included entries such as "great litig experience", "good background, voting not focus", and "litig background good." The notes also reflected substantial consideration of language abilities and discussion of the likelihood that the candidates would remain interested in the Section's work and not resign. Consistent with the hiring committee members' descriptions to us of their deliberations, the notes did not reflect consideration of the candidates' ideology or political affiliation.

After the hiring committee members completed deliberations on the 21 candidates that had been interviewed, Herren considered their suggestions and

determined which candidates to recommend to AAG Perez. Herren told the OIG that he remembered disagreeing with one committee member and refusing to recommend one of the member's preferred candidates. After considering the hiring committee's recommendations, Herren then prepared hiring approval memoranda for AAG Perez that discussed the candidates' qualifications.

AAG Perez approved all of Herren's proposed hires. The Voting Section made the last of its nine trial attorney hiring offers in July 2010, all of which were accepted.

3. Qualifications of the Newly Hired Attorneys

Our review of the backgrounds of the Voting Section's new attorneys revealed a high degree of academic and professional achievement. Of the nine attorneys hired, five had a degree from Harvard or Yale including two with law degrees from those universities, two had graduate degrees in addition to their law degrees, one was a Fulbright Scholar, and one was a Truman Scholar. With regard to work experience, eight of the nine attorneys had voting litigation experience, including seven who had two or more years of such experience; three previously had worked for the Voting Section at the Department; four had other litigation experience within the Department; five had eight years or more of general litigation experience; and one was a former legal advisor in Iraq and Afghanistan. In addition, five of the nine previously worked as attorneys for law firms that were included in The American Lawyer's top 100 law firms for 2010, which identifies the nation's most profitable law firms.[192] These firms handle highly complex legal matters and are known to recruit and hire some of the most skilled attorneys available.

Below we provide statistical information about the applicant pool and the Voting Section's hiring decisions.

B. Statistical Evaluation

We analyzed the applications of all of the Voting Section trial attorney candidates for the nine attorney positions and CRT's hiring selections to determine whether differences were apparent in the rate at which CRT selected or rejected candidates with differing political and ideological affiliations. When making these classifications we followed the methodology used in our prior review of politicized hiring in the CRT. As we stated in our earlier report:

> [W]e reviewed the applicants' resumes and application credentials. We examined whether a hired attorney's resume or application

[192] Given the list's focus on profitability, we recognize that it is an imperfect measure of the skill of the lawyers who work at the ranked firms.

> listed work experience with a Republican or Democratic politician or membership in an organization specifically affiliated with a political party, such as the Republican National Lawyers Association. We also considered whether an attorney's application materials cited membership in or employment by any organization generally considered to be conservative or liberal.[193]

We started by examining the overall applicant pool, paying particular attention to the applicants' ideological or party affiliations as expressed on their resumes, their level of relevant experience, and their academic qualifications. We then compared the qualifications and affiliations of the applicant pool with those of the nine selected candidates in order to determine whether any inferences could be drawn about ideological or partisan bias in the selection process. We paid particular attention to subsets of the rejected applicants who possessed qualifications that members of the hiring committee considered to be valuable. These qualifications related primarily to work experience, especially as concerns voting litigation.

1. Characteristics of the Applicant Pool

The most striking fact about the overall applicant pool was that an extremely small number of applicants submitted materials that indicated they had Republican or conservative affiliations. Figure 5.1 shows the breakdown of applicant affiliations. As reflected in this figure, we determined that of the 482 applications that the Voting Section received, roughly 237 (49 percent) listed Democratic/liberal affiliations. The resumes of 235 applicants (49 percent) did not allow us to classify them either way.[194] Only 10 (2 percent) of the 482 applicants were identifiable as Republican or conservative by their listed affiliations.[195]

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[193] U.S. Department of Justice Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2008, publicly released on July 13, 2009) 32 n.27. As noted above in footnotes 165 and 184, the classification of organizations as generally "liberal" or "conservative" is inevitably an imperfect and subjective assessment and therefore the statistics that we cite are rough approximations and not precise measurements. However, we determined that given that there were nearly 500 applicants for the attorney positions, the shifting of a handful of organizations or applicants to different categories would not have materially affected our analysis and conclusions. Appendix C is a list of the organizations that appeared on the applicants' resumes that we classified as "liberal" and "conservative."

[194] One applicant had both Democratic/liberal and Republican/conservative affiliations on her resume. For analytical purposes in the numbers, figures, and tables in this chapter, we have treated this candidate as part of the group of candidates with "unknown" affiliations.

[195] Of these 10 applicants, 5 worked for Republican politicians, and 6 were affiliated with 1 or more conservative organizations. These were the Alliance Defending Freedom, American Enterprise Institute, Americans United for Life, Campus Crusade for Christ,

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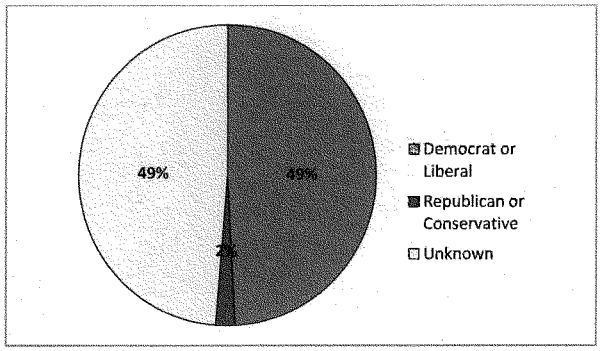
Figure 5.1 – Affiliations of All Applicants

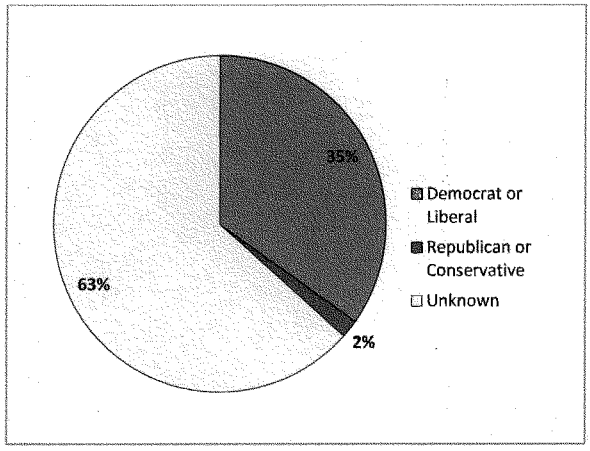


We found that when the pool of applicants was limited to applicants with substantial general litigation experience or applicants with some voting litigation experience, the ideological makeup of the groups changed significantly. Figure 5.2 shows the affiliations of applicants with eight or more years of litigation experience.

Christian Legal Aid, Christian Legal Society, Federation for American Immigration Reform, and the Pacific Justice Institute. One applicant was a member of the Federalist Society and the Republican National Lawyers' Association.

We recognize that some Republican or conservative applicants may have chosen to leave all references to their affiliations off their resumes because such affiliations should be irrelevant to an application for federal employment, or out of concern that including such an affiliation would work against their chances for selection.

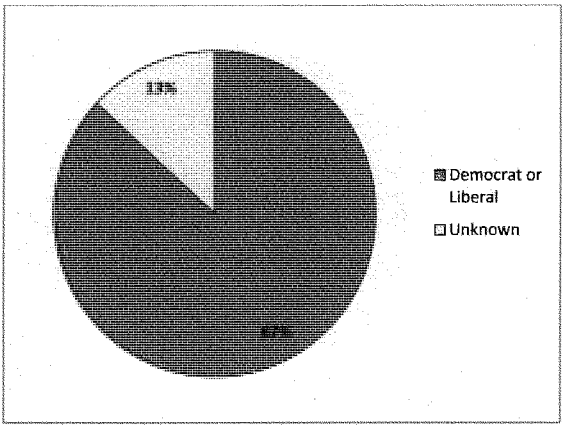
Figure 5.2 – Affiliations of Applicants with Eight or More Years of Litigation Experience



We determined that 112 of the 482 applicants had 8 or more years of general litigation experience. As shown on Figure 5.2, approximately 39 of those 112 (35 percent) had Democratic/liberal affiliations, only 2 (2 percent) had Republican/conservative affiliations, and 71 (63 percent) were unknown. Thus, an overall applicant pool that was evenly split between applicants with Democratic/liberal affiliations and those with unknown affiliations became a refined applicant pool that was majority unknown when the requirement of substantial general litigation experience was applied to it.

Applying the qualification of voting litigation experience to the overall applicant pool resulted in an even more dramatic change to the ideological makeup of the applicant pool. Figure 5.3 shows these results.

Figure 5.3 – Affiliations of Applicants with Voting Litigation Experience



We determined that only 38 of the 482 applicants had some amount of voting litigation experience. Of those 38 applicants, approximately 33 (87 percent) had Democratic/liberal affiliations, none (0 percent) had Republican/conservative affiliations, and 5 (13 percent) had unknown affiliations. Attached as Appendix D is a listing of the affiliations for these applicants and the source of their voting litigation experience. These percentages remained essentially unchanged when we refined the analysis even further, to consider only those applicants with at least 2 years of voting litigation experience. Of the 22 applicants with at least 2 years of voting litigation experience, roughly 19 (86 percent) had Democratic/liberal affiliations, none had Republican affiliations, and only 3 (14 percent) had unknown affiliations. Thus, focusing attention on those applicants with voting litigation experience (regardless of whether the experience was minimal or extensive), as opposed to those applicants with substantial general litigation experience, had the effect of making the applicant pool overwhelmingly Democrat/liberal.

2. Hiring Outcomes

We next examined the hiring outcomes, comparing the characteristics of the 9 candidates who were hired with the 473 applicants who were not. The purpose of our comparisons was to determine which characteristics appeared to be most important in the selection process, and to examine whether applicants with similar qualifications were treated differently depending on their partisan or ideological affiliations.

We determined that eight of the nine new hires had one or more liberal affiliations, and two of them also had an affiliation with the Democratic Party. In addition, five of the hires had an affiliation with one or more of the following five civil rights groups: ACLU, La Raza, LCCR, MALDEF and the NAACP. None of the 10 candidates with Republican/conservative affiliations were hired, and only 1 of the 235 candidates with unknown affiliations was hired.

We further evaluated differences between the 9 applicants who were hired, and the 473 applicants who were rejected, taken as a group and subdivided by ideological affiliations.[196] Table 5.1 presents data for several factors related to work experience, language abilities, and academic achievement for these groups.

[196] We use the term "rejected applicants" to describe all candidates who were not hired. In fact, some of these candidates may have removed themselves from consideration prior to a decision being made on their applications.

Table 5.1 - Attributes of Hired and Rejected Applicants[197]

Attribute	All Applicants	Hired	Rejected	Hired Applicants, by Affiliation			Rejected Applicants, by Affiliation		
				Democrat or Liberal	Republican or Conservative	Unknown	Democrat or Liberal	Republican or Conservative	Unknown
Number of Applicants	554	9	423	6	0	1	225	16	204
Experience Qualifications									
Highly Experienced	16 (3%)	3 (33%)	8 (2%)	3 (50%)	0	1 (100%)	5 (2%)	0	0
At Least Three Years Litigation	112 (20%)	3 (33%)	107 (25%)	3 (50%)	0	1 (100%)	35 (15%)	2 (12%)	70 (34%)
At least 3 Years Civil Litigation	22 (4%)	1 (11%)	15 (3%)	1 (17%)	0	1 (100%)	13 (6%)	0	2 (1%)
Seven Years Litigation	35 (6%)	1 (11%)	30 (7%)	1 (17%)	0	1 (100%)	26 (12%)	0	4 (2%)
Civil Litigation									
Experience	23 (4%)	1 (11%)	20 (5%)	1 (17%)	0	1 (100%)	8 (3%)	1 (6%)	11 (5%)
Worked for Top 100 Law Firms	153 (31%)	5 (56%)	128 (31%)	5 (83%)	0	0	86 (38%)	2 (12%)	70 (34%)
Academic Qualifications									
Highly Qualified Academically	50 (11%)	2 (22%)	36 (11%)	2 (33%)	0	0	27 (12%)	1 (6%)	22 (11%)
Other Attributes									
Spanish Language Primary	20 (4%)	2 (22%)	16 (4%)	1 (17%)	0	1 (100%)	11 (5%)	0	2 (1%)
Political Affiliation	160 (31%)	2 (22%)	98 (31%)	2 (33%)	0	0	92 (40%)	6 (35%)	0
Ideological Affiliation	203 (41%)	5 (56%)	134 (41%)	5 (83%)	0	0	137 (62%)	6 (35%)	1 (1%)

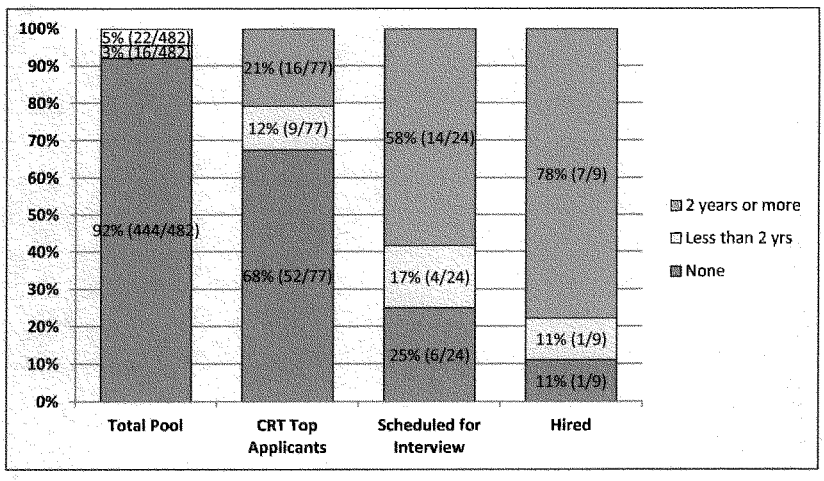
[197] We identified "Top 100 Law Firms" from The American Lawyer's top 100 law firms for 2010 which, as noted previously, ranks law firms based on their profitability and is an imperfect measure of the skill of the lawyers who work at them. The criteria we used to designate an applicant as "highly qualified academically" are described in the text below.

As Table 5.1 demonstrates, the new hires as a group had significantly more litigation experience than the candidates who were not hired. For example, 56 percent (5 of 9) of the new hires had 8 or more years of litigation experience. By comparison, only 23 percent (107 of 473) of the rejected applicants as a whole had this much experience. The differences are even greater with respect to *voting* litigation experience: 78 percent of the new hires (7 of 9) had 2 or more years of voting litigation experience, compared to 3 percent of all rejected candidates (15 of 473). In addition, 33 percent of the new hires (3 of 9) previously worked as trial attorneys in the Voting Section.

We also examined hiring *rates* among applicants in various categories, which demonstrated that the hiring process was extremely selective and focused on candidates with substantial voting litigation experience. Among all applicants, 9 of 482 (2 percent) were hired. Among those with Democratic/liberal affiliations, 8 of 237 applicants (3 percent) were hired. None of the 10 applicants with Republican/conservative affiliations and only 1 of the 235 applicants with "unknown" affiliations were hired. We examined hiring rates among candidates with voting litigation experience, which we found was the greatest predictor of hiring outcomes of the factors we reviewed. In all, there were 38 applicants with some voting litigation experience; 8 of them (21 percent) were hired. We also examined hiring rates among candidates who had 8 or more years of general litigation experience and found that this factor did not explain much about the hiring outcomes. There were a total of 112 applicants with such experience, of which 5 were hired (4 percent). However, all five of those applicants also had some voting litigation experience.

Figure 5.4 illustrates the prevalence of voting litigation experience in the hiring committee's identification of "top applicants," the selection of interviewees, and hiring recommendations.

Figure 5.4 – Voting Litigation Experience of the Applicant Pool



As the figure reflects, of the 77 candidates designated by the hiring committee as "top applicants," 32 percent (25 of 77) had voting litigation experience, while of the 24 applicants selected to be interviewed from the 77 "top applicants," 75 percent (18 of 24) had voting litigation experience. Thus, 72 percent (18 of 25) of the "top applicants" who had some voting litigation experience made it through the next cut and were asked to interview for the new positions, while only 12 percent (6 of 52) of the remaining "top applicants" were asked to interview.

Table 5.1 and Figure 5.4 corroborate the statements of members of the hiring committee that they weighed voting litigation experience very highly. They also show that there was a dearth of applicants with Republican or conservative affiliations or with unknown affiliations who also had voting litigation experience.

We next examined candidates who met high academic standards to determine whether this was a significant factor in hiring and whether there were differences in rejection rates for these candidates based on affiliation status. We considered candidates to be "highly qualified academically" if they met at least three of the four following criteria: (1) attended a top 20 ranked law school;[198] (2) were in the top 20 percent of their law school class; (3) had a

[198] We relied upon *U.S. News and World Report's* rankings for 2010: Yale, Harvard, Stanford, Columbia, New York University, Berkeley, Chicago, University of Pennsylvania,

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judicial clerkship; and (4) were a member of the law review. As shown on Table 5.1, academic qualifications do not appear to have been a major factor in the selection of new hires. Only 22 percent (2/9) of the new hires were "highly qualified academically," compared to 11 percent (50/473) of the rejected applicants as a whole, 12 percent (29/237) of the applicants with Democratic/liberal affiliations, 9 percent (22/235) of the applicants with "unknown" affiliations, and 10 percent (1/10) of the applicants with Republican/ conservative affiliations.[199] Because only one applicant with Republican/conservative affiliations was "highly qualified academically," we could not effectively analyze whether highly qualified Republican/ conservatives were treated differently than their Democratic/liberal counterparts.

The rejected applicants included a Rhodes Scholar with significant litigation experience and a former partner in a prestigious law firm who had worked at the Department previously and received a John Marshall Award – the Department's highest award presented to attorneys for contributions and excellence in legal performance. Both applicants were eliminated in the first round of application reviews and were not "top applicants"; one had liberal affiliations and the other had unknown affiliations.

V. Analysis

Although the focus of our investigation was hiring in the Voting Section since January 2009, in the course of our review we found evidence that an unusual effort was made during the transition period before the new administration took office in January 2001 to hire a significant number of new attorneys into the various CRT sections, including the Voting Section, on a highly accelerated schedule, with the effect of limiting the ability of the new administration to make its own decisions about hiring or staffing levels. We found no basis to conclude that this effort violated any law or Department policy. However, it created the perception, shared by senior career administrative officials in CRT as well as the incoming political leadership of the Division, that part of the motivation for this activity was to hire attorneys who favored the enforcement philosophy of the outgoing administration and to keep the hiring decisions out of the hands of the incoming administration. This perception undermines the public's confidence that career attorneys in the Division are selected in a non-partisan and non-ideological manner. We believe this effort harmed the relationships between incoming political leadership who

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University of Michigan, Duke, Northwestern, University of Virginia, Cornell, Georgetown, UCLA, Texas, Vanderbilt, USC, Washington University, Boston University, Emory, and Minnesota.

[199] Most of the hiring committee members told us they considered academic achievement in assessing candidates; two said they did not.

discovered the hiring campaign and the career leadership who participated in the effort, and generated mistrust between Division leadership and career staff in the Voting Section. The Department should ensure that this expedited hiring practice on the eve of an impending change in administration is not repeated.

In connection with our review of the hiring of career attorneys in the Voting Section since 2009, we did not identify any e-mails, documents, or testimony indicating that CRT staff purposely considered political or ideological affiliations when hiring experienced trial attorneys for the Voting Section. The overall applicant pool was evenly split between those with Democratic or liberal affiliations and those with unknown affiliations, but that there were only 10 applicants with identifiably Republican affiliations out of 482 total applicants. Our evaluation of CRT documents and witness statements and assessment of hiring statistics showed that CRT staff focused primarily on litigation experience related to voting rights when making hiring selection decisions, and that the subset of applicants with such experience was characterized by a high concentration of applicants with Democratic Party or liberal affiliations.

We determined that since publication of our earlier report on politicized hiring in CRT, the Division implemented numerous reforms to address the issues in the hiring process that our report described. CRT established new policies that limit the role of political appointees in the hiring process and that require mandatory training on merit system principles for members of CRT hiring committees.[200] CRT staff utilized these new policies when it recruited attorneys to the Voting Section in 2010. Accordingly, we found that each member of the Voting Section hiring committee signed a certification expressly committing to abide by merit system principles and not to consider political affiliation when evaluating applicants, or to use ideological affiliation as a proxy for determining political affiliation.

Our review of thousands of internal CRT documents, including e-mails, hand-written notes, and interviews of CRT staff who participated in the selection of the Voting Section's experienced attorneys did not reveal that CRT staff allowed political or ideological bias to influence their hiring decisions. All members of the hiring committee, including the one member who was a self-identified Republican, told us that politics and ideology were not part of the hiring committee's deliberations.

We also found that after the hiring committee was formed, its members identified selection criteria that were based largely on voting rights work

[200] We recognize that limiting the role of political appointees in hiring does not guarantee that hiring decisions will be free of partisan or ideological considerations, because career employees also may have strong partisan views and affiliations and may act on them in making hiring decisions.

experience. Our interviews with hiring committee members, review of contemporaneous notes taken during the hiring committee's deliberations, and assessment of its recommendations showed that litigation experience involving voting rights and the statutes that the Voting Section enforces were highly important to the hiring committee's review of applications.[201]

Our statistical assessment of the Voting Section's hiring process confirmed that members of the hiring committee considered voting litigation experience to be highly important. We found that 75 percent (18 of 24) of the applicants who were invited for interviews by the hiring committee and 89 percent (8 of 9) of those hired had at least some voting litigation experience. In comparison, only 6 percent (30 of 473) of the rejected applicants had such experience, and only 1 of 444 applicants without it was hired. (This applicant was "highly qualified academically" and fluent in Spanish.) The difference was similarly pronounced with respect to applicants who had at least two years of voting litigation experience. We determined that 78 percent of the new hires (7 of 9) had 2 or more years of voting litigation experience compared to only 3 percent (15 of 473) of all rejected applicants. Three of the nine new hires previously had worked as trial attorneys in the Voting Section.

Our assessment also revealed that roughly 33 of the 38 applicants (87 percent) with voting litigation experience had Democratic/liberal affiliations, and that the other 5 applicants had unknown affiliations. In contrast, the entire applicant pool contained only 10 candidates whose resumes indicated Republican or conservative affiliations, and of that group none had any voting litigation experience and none were hired. Eight of the 38 applicants with voting litigation experience were hired, 7 of whom had Democratic/liberal affiliations and 1 who had unknown affiliations. None of the other four applicants with voting litigation experience and unknown affiliations were hired. We found that all four of these applicants worked for private law firms and government entities, and that two of the four had comparatively little

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[201] We found an analogous situation with other Department components when we evaluated hiring in our earlier reviews of the Honors and Summer Law Intern Programs. As we noted at the time, while the components placed far less emphasis on experience given that they were drawing from a candidate pool of law school students and recent graduates, some components nevertheless indicated a preference for candidates with a demonstrated expertise related to the component's area of work:

> [S]ome components looked for experience that indicated an interest or expertise in the type of law practiced by that component. For example, the Antitrust Division valued a background in economics, [the Environment and Natural Resources Division] a background in environmental issues, and the Civil Division's Office of Immigration Litigation (OIL) or [the Executive Office of Immigration Review] a background in immigration law.

SLIP Report at 11.

voting litigation experience, such as working on a single voting case. Neither of those two applicants were interviewed. Of the remaining two applicants, the hiring committee interviewed one of them and concluded that he would require substantial guidance. The committee was not impressed with the background of the fourth applicant and he was not designated a "top applicant." We found that this data was not sufficient to conclude that the conservative and unaffiliated candidates were purposely rejected because they lacked Democratic or liberal affiliations, particularly in the absence of any documentary or other information to indicate otherwise.

Witnesses told us they weighted voting litigation experience heavily because the Section had lost many experienced attorneys and was expecting a large volume of new litigation. The hiring decisions were consistent with this explanation. Eight of the nine candidates who were hired had such experience (the ninth was highly qualified academically and was fluent in Spanish). The pool of applicants having such experience was made up almost entirely of applicants with Democratic/liberal affiliations. However, we did not find documentary or other evidence to indicate that the Voting Section used voting litigation experience as a surrogate to identify and select candidates with Democratic/liberal affiliations.

Witnesses told us that the Voting Section valued voting rights litigation experience very highly in the selection process. This was a legitimate criterion, particularly in light of the Voting Section's stated need for experienced attorneys who would be ready to "hit the ground running" by leading complex voting rights cases immediately. However, we note that the use of this criterion created an applicant pool that was highly skewed toward applicants with liberal affiliations since the vast majority of the organizations that provided the voting rights experience that the hiring committee was able to consider were liberal organizations. The Department observed, and at least one prominent conservative witness confirmed, that there are few if any conservative organizations that provide voting rights experience to their employees.

One factor that we could not assess with precision was the impact of the outreach list, which was predominantly neutral but included approximately 10 liberal organizations and one conservative organization. We did not have data to indicate which applicants learned about the vacancies through the outreach list and what their ideological affiliations were. We recognize, however, the possibility that the use of such a list could tend to bias the applicant pool toward persons affiliated with the organizations on the list.

Our investigation identified several instances in which two hiring committee members expressed views that we found would lead a reasonable person to question their ability to evaluate job applications free from political or ideological bias. These included e-mails sent by Poole on the Department's e-mail system, before the hiring committee was formed, that were highly critical

of Republicans or conservatives. However, we did not find any evidence that Poole or other Voting Section staff allowed their political views to compromise their duty to apply merit system principles when evaluating job applications, and we note that each member of the hiring committee signed a certification attesting to abide by those principles.[202] Moreover, other hiring committee members, including one who was Republican, told us they did not detect any bias in the hiring-related conduct of the two attorneys who had previously sent e-mails reflecting their political views.

We believe that Poole's selection by Herren to serve on the hiring committee created a risk that the Committee's judgments and the Section's hiring would be subject to future charges of partisanship, particularly in light of the recent high-profile issues in the Division with regard to politicized hiring and the efforts by the Division to modify its hiring protocols to ensure that future hiring decisions were free from actual or perceived politicization. Herren was a recipient of some of the most partisan e-mails that Poole had disseminated on the Department's e-mail system. Poole's use of Department resources in this manner potentially called into question his ability to objectively evaluate applications free from political bias. In addition, Poole's practice of expressing his partisan views in Department e-mails was widely known.[203] However, as noted above, we found no evidence that Poole's conduct in making hiring recommendations was infected by his partisanship.

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[202] This circumstance stands in contrast to the evidence we found in our prior review of CRT hiring practices. We found numerous e-mails and witness statements establishing that Schlozman considered candidates' political and ideological views. Schlozman's e-mails, for example, showed that he spoke with an applicant "to verify his political leanings and it is clear he is a member of the team," inquired whether another applicant was "conservative?", and that with respect to the Voting Section his "tentative plans are to gerrymander all of those crazy libs right out of the section." CRT Report at 21-23.

[203] In response to a draft of this report, Herren objected to our criticism. In written comments he stated that Poole was only one of three attorneys in the Section in early 2010 who had experience hiring and managing experienced attorneys, and that Poole's criticisms of others were not limited to conservatives. Although Herren stated that he could not defend Poole's e-mailing practices, he explained that he retained confidence in Poole. According to Herren:

> I personally worked closely with [Poole] on a number of projects in his time in the Voting Section. I saw firsthand his work with attorneys and election officials around the country on very sensitive and high profile matters, including Democratic and Republican attorneys, election officials, and statewide elected officials. [Poole] was exceptionally competent and professional in his work dealings, particularly with persons outside the office. I had confidence, based on my extensive personal work experience with [Poole], [that] he could separate any personal views from his work. Based on my experience, [Poole] had high ethical standards, independent judgment, and he handled highly sensitive matters with discretion (in the sense that I never saw any evidence that he would leak details about our work). I trusted him. . . . I saw nothing during the hiring process that indicated [Poole] did anything wrong. Your draft

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We received inconsistent responses from CRT staff to our questions concerning the purpose of the list of former Voting Section attorneys that DAAG Fernandes requested in late 2009 – a list that ultimately included 25 former Voting Section attorneys but omitted several former Section attorneys who were widely perceived to be conservatives. Fernandes stated that she requested a list of attorneys who had left the Section since 2005 and did not seek a list that excluded conservatives. Herren told the OIG that he could not remember how the list of attorneys was compiled, but believed it should have included attorneys who left during the prior administration, primarily those who departed the Section due to improper practices like those described in the prior OIG report. Wertz told us she believed that she may have worked on the list and said that she thought that Fernandes was looking for staff with extensive voting rights experience who might be interested in returning. However, when we pointed out that some attorneys on the list did not have extensive voting experience, she could not explain why they were included. She also could not explain why conservatives were left off the list even though they had significant voting litigation experience. She said that they may not have been interested in returning, though we found that Voting Section staff did not make any attempt to gauge the interest of the conservative attorneys. Berman said that the list was made up of attorneys with redistricting experience.

Although we did not receive a consistent explanation for the purpose of this list, we did not find sufficient evidence to conclude that the list was actually used in the recruitment and selection of new attorneys for the Voting Section. However, we found the explanations we received about the list troubling because it appeared that the list was prepared in part for recruiting purposes (Fernandes said she thought that there may be former staff who wanted to return to the Section), people widely perceived to be conservatives were omitted from it, and staff in the Voting Section failed to provide a consistent explanation as to why that was the case.

We believe these incidents point to ongoing risks within the Voting Section for future violations of merit system principles, as well as for creating perceptions that CRT engages in favoritism based on ideology and politics. We believe that the Division should consider instituting several additional protections that will minimize the risk of prohibited personnel practices, as well as the perception of favoritism.

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report finds nothing wrong in what [Poole] actually did during the hiring process. I do not believe that the alleged perception that [Poole] was partisan or ideological should trump the reality that I had reasonable basis for believing he had something of value to offer to the process and I honestly believed he could be fair.

We found that the Voting Section's use of the "general civil rights/public interest experience" criterion in its evaluation of applicants, without any greater specificity or definition, was problematic. We recognize why reviewers might look favorably upon applicants with "general civil rights experience" and/or "public interest experience" in the context of the Section's work. However, we believe that criterion lacked sufficient connection to the qualifications required for the experienced trial attorney position and, due to its broad scope and use to assess the degree of applicants' "commitment" to civil rights, was vulnerable to misuse to determine applicants' ideological leanings.[204] The reasons the committee members gave us for using this criterion were not persuasively connected to the job skills needed to be a successful voting rights litigator. We did not understand what this criterion added beyond the other criteria that the hiring committee employed, such as experience with the statutes that the Voting Section enforces.[205] Most committee members stated that it provided some assurance that the applicant would be interested in the Section's work and not leave prematurely, and would have experience interacting with communities that had a history of being disenfranchised. Two members told us its purpose in part was to gauge the applicant's "commitment to civil rights." One hiring committee member told us, however, that he was not sure that having such a commitment made the applicant more qualified or capable of successfully performing voting litigation work.

We also found that the "general civil rights/public interest experience" criterion was not included in the list of sample criteria contained in CRT's guidance document for hiring experienced attorneys or the Voting Section's job announcement. The guidance emphasizes the importance of specificity in defining job duties and desired skills and experience:

> Because the type of work, and the skills and experience needed to perform that work varies from section to section, CRT does not utilize Division-wide selection criteria/qualifications for hiring experienced attorneys. Instead, section managers should tailor vacancy announcements to reflect the specific duties of the position and the specific skills and experience sought by the section (emphasis added).

We believe that the "general civil rights/public interest experience" criterion is not sufficiently "tailored" and the explanations provided to us regarding the practice of assessing the degree of applicants' civil rights "commitment" were inadequate. Although we find it unremarkable that staff in the Civil Rights Division would look favorably upon applicants with relevant civil rights experience when filling job vacancies (such as voting rights litigators

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[204] The criterion was not limited to litigation or investigation experience, for example.

[205] The one committee member retired before we asked about this issue.

to fill voting litigation positions), our interviews highlighted the risk that poorly defined or overly broad hiring criteria can create opportunities to bypass skills legitimately required or preferred for a particular position in favor of inappropriate considerations. Evaluating the degree of applicants' civil rights "commitment" creates the possible appearance that CRT is searching for applicants who share political or ideological views common in the liberal civil rights community. This perception is compounded by the fact that the "commitment" that passes muster often is demonstrated through work with a small number of influential civil rights organizations. We found that 43 percent of the "top applicants" (33 of 77), 71 percent of those invited to be interviewed (17 of 24), and 56 percent of those hired (5 of 9) had an affiliation with one or more of the following five organizations: ACLU, La Raza, LCCR, MALDEF and the NAACP. We believe that civil rights organizations, as well as private law firms, the military, state and local government, and others, can provide applicants with experiences that are highly relevant to job duties in the Voting Section.

If the Voting Section in fact prefers candidates with experience working with disenfranchised communities, for example, it should establish such work as one of its hiring criteria rather than subsuming it into a broad experience criterion that readily can be manipulated to assess one's commitment to political or ideological objectives and that adds marginal value to the hiring process. We believe the same applies for the assessment of applicants' civil rights "commitment" as a gauge of their willingness to remain with the Section. If CRT is concerned that applicants will leave prematurely, they can ask applicants to commit to stay with the Section for a defined period of time. For example, the Tax Division requires its new hires to sign a form committing to four years of continuous service.

We therefore recommend that the Voting Section better adhere to the guidance that CRT already has developed for hiring experienced attorneys and use hiring criteria that are better tailored to the specific duties of the position and that appear in the Section's vacancy announcement.

We also encourage the Voting Section to reevaluate its hiring criteria to better account for the significant contributions that applicants with limited or no civil rights experience could make to the Section, especially those with defensive litigation backgrounds.[206] Our review of the rejected applicant pool showed that the Voting Section passed over candidates who had stellar academic credentials and litigation experience with some of the best law firms in the country, as well as with the Department.

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[206] CRT's guidance for hiring experienced attorneys includes a lengthy list of potential criteria. CRT sections are not required to use these criteria, however.

Given the extremely high academic performance and professional achievement that was reflected in the resumes of these applicants, we are not persuaded that they would be significantly less capable voting rights litigators than applicants with civil rights backgrounds in disciplines other than voting (such as employment or housing law).[207] We do not believe that attorneys who start their careers as tax lawyers or in some other area of the law and who apply for a position in CRT necessarily lack a sufficient interest in the Section's work. For example, financial circumstances may have caused some highly qualified law school graduates to start their careers in higher-paid law firm associate positions rather than in the public sector. Moreover, when we asked Attorney General Holder about the importance of bringing staff to the Department who have defensive litigation experience, he stated that "[t]here is value in bringing people in from those different places because . . . career lawyers don't have that private practice experience. . . . And I think that mix makes for a better, healthier Division."

We concur with this view and therefore recommend that CRT not place primary emphasis on a "demonstrated interest in the enforcement of civil rights laws" as a hiring criterion. As with the assessment of candidates' "commitment to civil rights," we believe that this criterion says little, standing alone, about one's litigation skills and adds minimal additional insight about a candidate beyond what is already provided through use of the criterion that assesses the candidates' "substantive knowledge and expertise in the laws, rules and regulations applicable to the work of the section." We are hard pressed to identify a situation where an applicant who has taken the effort to apply for a position and has such "knowledge and expertise" would at the same time lack a bona fide "interest" necessary to be successful, and that does not also entail evaluation of the candidate's ideology. To the extent that the "demonstrated interest in the enforcement of civil rights laws" criterion refers to civil rights litigation experience on behalf of plaintiffs, we believe this criterion overlooks the value of defensive litigation experience and risks skewing the qualified applicant pool to candidates having experience of a type that is typically found with a limited number of civil rights groups.

In sum, we make the following recommendations. Our first three recommendations apply specifically to the Voting Section:

(1) That the Voting Section use hiring criteria that are based on the specific skills, duties, and experience that are required or preferred for vacant positions and that appear in the Section's vacancy announcement;

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[207] Wertz told the OIG that the Section was presented with a wealth of voting experience in the last applicant pool that may not repeat itself, and that if the Section had to make selections based on general litigation experience it would have to develop additional ways to rank applicants. We agree with this assessment.

(2) That the Voting Section refrain from relying on the "general civil rights/public interest" criterion in the future; and

(3) That the Voting Section adopt hiring criteria that better account for the significant contributions that applicants with limited or no civil rights backgrounds can make to the Section, including those with defensive litigation experience.

Our fourth recommendation relates to a criterion that is used Division-wide, and therefore applies to all of CRT:

(4) That the Civil Rights Division not place primary emphasis on "demonstrated interest in the enforcement of civil rights laws" as a hiring criterion.

VI. Conclusion

We did not find sufficient evidence to conclude that CRT staff considered applicants' political or ideological affiliations when hiring experienced trial attorneys for the Voting Section in 2010. Nevertheless, the primary criterion used by the Voting Section hiring committee in assessing the qualifications of applicants, namely prior voting litigation experience, resulted in a pool of select candidates that was overwhelmingly Democratic/liberal in affiliation. We were told that few if any conservative organizations provide voting rights experience to their employees, which could have contributed to this effect. We found that prior voting litigation experience was a reasonable criterion to use. Additionally, our investigation identified several hiring practices that we believe increased the risk of violating merit system principles and creating perceptions that the Voting Section engaged in prohibited personnel practices, including use of a general civil rights/public interest criterion. We therefore made four recommendations that the Voting Section and CRT should implement to mitigate these risks.

CHAPTER SIX
INVESTIGATION OF ALLEGED POLITICITIZATION OR BIAS IN RESPONSE TO REQUESTS FOR RECORDS

I. Introduction

This chapter describes the results of our investigation into whether Civil Rights Division staff, primarily the Voting Section, treated responses to requests for records differently based upon the political affiliation or ideology of the requester.

On February 10, 2011, the OIG received a request from Congressman Frank R. Wolf to investigate whether the political or ideological position of the requester may have influenced the timing and nature of the Civil Rights Division's responses to requests for records from the public. Congressman Wolf's request to the OIG referred us to an attachment to his letter, which contained a blog post by J. Christian Adams, a former attorney in the Voting Section, on the blogsite Pajamas Media (renamed PJMedia in October 2011).[208] In his blog post, Adams alleged that CRT provided preferential treatment when responding to records requests from civil rights groups or individuals alleged to support "liberal" issues in comparison to requests from Republicans or individuals or organizations alleged to support "conservative" issues.[209] Adams's blog post first provided two different examples where requests from Republicans or conservative media allegedly received slower responses than those from liberal organizations for similar types of records. Adams's blog post then listed 16 separate incidents where "liberals" allegedly received fast response times, and 10 separate incidents where "conservatives, Republicans, or political opponents" allegedly received slow response times. The vast majority of the incidents described in Adams's blog post related to requests for Voting Section records.[210]

On April 29, 2011, the OIG notified Congressman Wolf that we intended to broaden the scope of our review of the Voting Section to include an

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[208] Appendix E to this report contains a copy of Congressman Wolf's request to the OIG and the attached blog post from Mr. Adams.

[209] For purposes of this chapter, we used the same characterizations of individuals or groups, such as "liberal" and "conservative," that Adams used in his blog post.

[210] Adams also made these same allegations in a written submission to a hearing before the Senate Judiciary Committee in March 2011. *See* U.S. Senate Committee on the Judiciary, The Freedom of Information Act: Ensuring Transparency and Accountability in the Digital Age, 112th Cong., 1st sess., March 15, 2011, 63-69.

examination of whether requests for records submitted to the Voting Section were treated differently based upon the perceived political affiliation or ideology of the requester.[211] Our investigation of the allegations of disparate treatment of records requests based on political affiliation of the requesters included both a review of the particular comparisons identified in Adams's blog post as well as a comprehensive review of Voting Section records and internal Voting Section e-mails to identify other potential instances of disparate treatment or interference in the records response process.

To conduct this review, we examined applicable laws, regulations, and policies governing requests for Voting Section records, and applicable regulations and standards barring preferential treatment in the performance of official work. We also examined tens of thousands of Voting Section documents related to records requests, including records regarding all the instances of alleged preferential treatment cited in Adams's blog post; records regarding requests by the same individuals, organizations or political parties listed in the article; and thousands of Voting Section e-mails relating to records requests. We conducted interviews with current and former managers in the Voting Section, the Division, and the Division's FOIA Office. We also interviewed relevant managers and staff in the Voting Section who oversaw and handled requests for Voting Section records, as well as Mr. Adams.

Section II of this chapter provides relevant background information, including an overview of the different kinds of records requests that the Voting Section receives from the public, and a description of the Voting Section's procedures for responding to such records requests and the evolution of those procedures since 2003. Section III provides our factual findings. Section IV provides our analysis regarding the allegations, summarizes our conclusions, and provides a recommendation.

II. Background

A. Relevant Standards of Ethical Conduct

All Department employees are subject to the Standards of Ethical Conduct for Executive Branch Employees, codified at 5 C.F.R. Part 2635. *See* 28 C.F.R. § 45.1. These Standards provide that "employees shall act impartially and not give preferential treatment to any private organization or individual." 5 C.F.R. § 2635.101(b)(8). Therefore, with respect to our review here, the Standards of Ethical Conduct would bar any disparate treatment by Voting

[211] In March and April 2011, the Department reported in correspondence to members of Congress that these allegations appeared to be unfounded, after it conducted an initial review of them in response to several congressional oversight requests in February and March 2011.

Section employees in response to requests for Voting Section records on the basis of ideological or political considerations, or personal friendships or affiliations.[212]

B. Overview of Records Requests Received by the Voting Section

The requests for information that the Voting Section receives fall into two main categories: requests for copies of pending Section 5 submission files, and requests for information pursuant to FOIA, 5 U.S.C. § 552.

1. Requests for Pending Section 5 Submission Files

Many records requests received in the Voting Section relate to preclearance submissions made under Section 5 of the Voting Rights Act. As discussed in Chapter Three, Section 5 requires certain states and jurisdictions to obtain approval from the Department or the U. S. District Court for the District of Columbia prior to implementing changes in their election procedures. The Department has promulgated regulations, referred to as procedures, that govern the administration of Section 5. *See* 28 C.F.R. Part 51. Under these procedures, the public may submit written comments on a proposed voting change for which preclearance is sought – known as a Section 5 submission – during the 60-day period when the submission is pending before the Division. *See* 28 C.F.R. §§ 51.1(a)(2) and 51.29-30. To aid the public-comment process, the Department's procedures permit the public to obtain copies of pending Section 5 submission files upon written request through regular mail, facsimile, or electronic mail. 28 C.F.R. § 51.50(d). However, the Department's procedures also permit portions of pending Section 5 submission files to be withheld to the extent they are exempt from inspection under FOIA, 5 U.S.C. § 552(b).[213] *Id.*

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[212] Additionally, these Standards provide that "an employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." 5 C.F.R. § 2635.702. An expedited response to a request for records may be a "private gain" or "benefit" within the meaning of 5 C.F.R. § 2635.702. Therefore, for a Voting Section employee to expedite a response to a request for records on behalf of a friend would potentially violate 5 C.F.R. § 2635.702. *See* 5 C.F.R. § 2635.702(a) (example 2). While Congressman Wolf's request for an OIG investigation focused on alleged ideological or political bias in response to records requests, our review examined materials and witnesses for any kind of bias, including one based upon personal ties to the Voting Section. Other than some general anecdotes discussed below, we did not find specific instances of bias in responding to records requests based upon personal ties to the Voting Section since 2009.

[213] Responsive materials typically withheld involve privacy issues, such as home addresses, phone numbers, or voter registration data, which may be part of a pending Section 5 submission file. *See* 5 U.S.C. § 552(b)(7)(C).

Public requests for pending Section 5 submission files are time-sensitive, given the limited 60-day period to submit comments on a proposed voting change under Department consideration. *See* 28 C.F.R. §§ 51.1(a)(2), 51.9. Materials responsive to a request for a pending Section 5 submission file are usually easily located and gathered by: (1) reviewing the records for the Section 5 submission that have been loaded on a computer database, referred to as Submission Tracking and Processing System (STAPS); (2) confirming that STAPS contains the complete file by reviewing the original paper file for the particular submission; and (3) conferring with the personnel in the Voting Section assigned to review the pending Section 5 submission to ensure all relevant materials are included.

Due to the time-sensitivity of such requests, we were advised that the Voting Section gives first priority to responding to requests for records concerning pending Section 5 submission files. The Department's procedures codify this priority by expressly stating that it is the Department's "intent and practice to expedite, to the extent possible, requests pertaining to pending submissions." 28 C.F.R. § 51.50(d).

2. Requests under the FOIA

Public requests for all other Voting Section records, including closed Section 5 submission files relating to voting changes no longer under review, fall under the provisions of FOIA, 5 U.S.C. § 552. The Department's implementing regulations for FOIA are set forth in 28 C.F.R. Part 16.

Absent exigent circumstances, the Voting Section gives second priority to responses to FOIA requests for Voting Section records that do not involve pending Section 5 submissions. However, it is Voting Section policy to expedite requests for closed Section 5 files if the Voting Section determines that those files are necessary to review in order to be able to provide comments on a pending Section 5 submission file.

Under Section 552(b), FOIA sets forth several exemptions that permit an agency to withhold records in their entirety or in part. 5 U.S.C. § 552(b). These exemptions provide protections to nine specific categories of records. *Id.* These categories include inter-agency or intra-agency documents that would be unavailable by law to a person or entity in litigation with the agency; and records compiled for law enforcement purposes if, among other things, disclosure "could reasonably be expected to" interfere with enforcement proceedings, or constitute an unwarranted invasion of privacy. *See id.* §§ 552(b)(5), (b)(7)(A), and (b)(7)(C).

We were told that public requests for Voting Section records under FOIA are highly variable with respect to the complexity of the request, the volume of responsive materials, and the difficulty involved in gathering such materials.

Such requests have ranged from those seeking a single letter to others seeking, for example, records regarding a state's history of compliance with provisions of the NVRA, or records regarding the total number of Section 5 submissions and objections interposed by the Department over several decades. We further were told that some FOIA requests for Voting Section records require extensive review to determine if certain records should be withheld because they are exempt from disclosure. *See* 5 U.S.C. § 552(b). This document screening process can be time-consuming, even if all responsive materials may be withheld, because the Department FOIA regulations require an estimate of withheld responsive materials by page-count or some other form of reasonable estimation, and a determination of the exemption category that applies to each withheld responsive document or categories of documents. *See* 28 C.F.R. § 16.6(c).

Following receipt of a FOIA request, the Voting Section logs it in and places it in a queue, which we were told the Voting Section generally endeavors to address in the order of receipt. However, we were also told that in order to minimize the number of and processing time for pending requests, the Voting Section responds promptly to simple requests such as a request for a determination letter issued by the Department regarding a Section 5 submission or a print-out from the STAPS database.[214] If possible, the Voting Section also will try to respond promptly to requests involving time constraints such as a litigation deadline, a request related to a pending Section 5 submission file, or other demonstrated pressing need, provided that such requests are relatively narrow and not time-consuming. In contrast, complex requests involving large amounts of time or work will receive slower responses, even if such requests were received earlier.

Such "multi-track" processing of FOIA requests is expressly authorized under FOIA and Department implementing regulations. *See* 5 U.S.C. § 552(a)(6)(D)(i); 28 C.F.R. § 16.5(b). We were told that the Division's FOIA Office and the Voting Section staff notify FOIA requesters that they may receive faster processing of their requests if they are willing to the narrow the scope of their requests.

The Voting Section's overall prioritization of responses to requests for Voting Section records was first summarized on November 13, 2003, in a chart form for inclusion in a Section 5 guidance manual on the Voting Section's

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[214] Witnesses told us that it usually takes a short time (as little as one hour) to locate responsive information to requests of this type and to send out a response. In addition, according to managers in the FOIA Office and Voting Section staff, this pragmatic approach prevents simple requests that may take a short time and involve a few pages of responsive material from "sitting" in the queue for a very long duration until staff can complete earlier, voluminous, and time-intensive requests. It also prevents unnecessary increases in the number of pending requests while complex requests are processed.

Intranet. The prioritization of responses, as discussed above, has generally remained the same since 2003. However, other procedures for processing requests for Voting Section records have changed over time. The current procedures are generally summarized on the Voting Section's Intranet and in training session handouts for all Section employees. The development of these procedures is discussed below.

C. Organizational Responsibilities for Responding to Records Requests

1. Responses to Requests for Pending Section 5 Submission Files

Voting Section personnel oversee responses to requests for pending Section 5 submission files. For such requests, Voting Section personnel search for, gather, and respond directly to the requester for records that can be released in their entirety.[215] Voting Section personnel send any responsive materials that may require redaction to the Division's FOIA Office for final determination, processing, and expedited response to the requester with any redacted materials.

Three Voting Section employees are assigned to work on requests for pending Section 5 submission files:

- a Deputy Section Chief, SaraBeth Donovan, who reviews and oversees draft responses in addition to other Voting Section responsibilities;[216]
- an analyst (the "Records Analyst") who has worked on Voting Section records requests for more than 13 years and currently does so exclusively due to the backlog, which is discussed in more detail below; and
- a full-time contract-attorney who was hired in August 2010 for the sole purpose of helping to reduce the large backlog of records requests in the Voting Section.

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[215] The Voting Section also sends a courtesy copy of these requests and direct responses to the Division's FOIA Office, which assigns a FOIA number to such direct responses from the Voting Section for recordkeeping purposes.

[216] Another Voting Section attorney acts as a back-up reviewer to Donovan when needed.

2. Responses to FOIA Requests

The Division's FOIA Office oversees responses to FOIA requests for Voting Section records and records in the 10 other Division sections and Division leadership offices. The FOIA Office is responsible for ensuring the Division's compliance with FOIA, providing guidance and training to Division employees on FOIA-related issues, and formally responding to requests for records from the public.

Upon receipt of a FOIA request for records within the possession of the Division, the FOIA Office sends a referral to the relevant section and requests that it search for responsive materials and provide a recommendation regarding disclosure of any responsive materials.[217] After searching for and collecting responsive records, Division sections provide these materials to the FOIA Office to process a response to the requester. In addition, sections provide their recommendations to the FOIA Office as to what materials can be released in their entirety, what materials should be withheld fully or partially under a FOIA exemption, and what materials may be released as discretionary disclosures even though they could be withheld under FOIA exemption.[218] Once a response is completed, the FOIA Office will issue a formal response to the requester.

Within the Voting Section, the same three employees who are responsible for responding to requests for pending Section 5 submission files are also responsible for searching, reviewing, and making recommendations for the release or non-release of materials responsive to FOIA requests for Voting Section records.

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[217] The public can request Voting Section records (pending Section 5 submission files or records under FOIA) directly by sending an e-mail request to Voting.Section@usdoj.gov, or by clicking on this e-mail address link on the Section's Web site, and specifying the records requested. *See* http://www.justice.gov/crt/about/vot/ (accessed March 8, 2013). However, the Voting Section sends a copy of each FOIA request that it receives directly from the public to the FOIA Office, which logs in the request and refers it back to the Voting Section for a recommended response.

[218] The FOIA Office generally makes the final determination on the release or non-release of responsive materials. However, any disagreements between the FOIA Office and a section can be resolved by the Division's leadership or at higher levels within the Department. In response to a Presidential Memorandum declaring that agencies should adopt a presumption in favor of disclosure on FOIA matters, the Attorney General issued a memorandum to all heads of agencies in which he, among other things, "strongly encourage[d] agencies to make discretionary disclosures of information" whenever possible. *See* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009); Attorney General Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009).

D. Voting Section Creates Procedures To Respond to Records Requests (2003)

The Records Analyst told the OIG that she believed that prior to August 2003 it was common practice for Section staff to provide Voting Section records directly to requesters whom they knew personally without the knowledge of staff who were responsible for records requests. We were told by the Records Analyst that an incident in approximately August 2003 triggered the adoption of more formal Section-wide procedures. According to the Records Analyst, sometime during the summer of 2003, two individuals on opposite sides of private litigation made separate requests for the same records to the Voting Section. One requester sought the records directly from Section personnel whom he knew and received a response immediately outside of the FOIA process, without the knowledge of Section personnel assigned to handle FOIA requests. The other requester went through the FOIA process and did not receive an immediate response. When the other requester discovered that his opponent in litigation received an immediate response, he lodged a complaint to the Division's leadership about disparate treatment.

In late August 2003, the Division's leadership held a meeting with Division FOIA managers, Voting Section managers, and Voting Section personnel who worked on records requests to discuss this incident of perceived disparate treatment. Voting Section staff who attended the meeting told the OIG that Division leadership was obviously displeased about this episode. Division leadership learned that it was not uncommon for career staff to provide records directly to requesters whom they knew personally, without following the FOIA process.

Following Division leadership directives and the meeting with Division leadership, the Voting Section took several measures to change the way records requests would be handled in the future. Voting Section managers issued a Section-wide directive, "effective immediately" on August 22, 2003, that staff should not respond to any public requests for Section 5 related materials that may be used in litigation. In addition, Voting Section managers issued Section-wide instructions in November 2003 that set forth the procedures and priorities for responding to records requests, as generally described above in Section II.B. The Section-wide instructions stated that requests for Voting Section records were to be handled only by Section personnel assigned to responding to these matters. Voting Section staff told the OIG that the policy set forth in these instructions on prioritization of requests is still generally consistent with how records requests are handled today, although other procedures for processing requests have changed. According to Voting Section staff, these instructions represented the first time that policies were distributed to the entire Section for the various categories of requests for Voting Section records.

As an additional measure, the Division's leadership instructed the Division's FOIA Office to start assigning FOIA tracking numbers for all records requests, including pending Section 5 file requests, to ensure better recordkeeping of all responses. Voting Section staff also were instructed to log all requests and the action taken in response to the request.

In July 2004, Division leadership requested that the Voting Section provide immediate notice of requests from major civil rights groups. Hans von Spakovsky, former counsel to the Division's AAG, told the OIG that requests from major civil rights groups warranted immediate notification at the time to ensure that they were handled appropriately and not being delayed given past criticism of the Division from these groups. In response, the Voting Section began providing a monthly chart to Division leadership that summarized all records requests received, including the identity of the requesters. Mr. von Spakovsky told the OIG that these procedures were designed to provide Division leadership with periodic notice and a general picture of the requests received on particular topics. He also said the procedures were implemented because of concern over past incidents where staff handled requests without the FOIA Office's or Division leadership's knowledge, and because of the general perception among some in Division leadership that some Voting Section staff might show favoritism to advocacy groups with which they had past ties.

In September 2004, the Voting Section disseminated its first monthly chart to Division leadership. Voting Section staff told the OIG that the chart listed the identity of requesters exactly as they identified themselves on their requests; the date the request was received, a summary of the request, the status of the request, and the FOIA tracking number for the request. The Voting Section sent such monthly charts to Division leadership as a routine matter from September 2004 until at least October 2010.[219]

E. Designation of New Manager to Oversee Records Requests in 2006

In May 2006, Voting Section Chief John Tanner designated Donovan to oversee and manage records requests after the Deputy Section Chief who previously served in this role left the Department. Donovan has managed records requests since 2006 and was promoted to Deputy Section Chief in 2010. During her tenure, Donovan has systematized the process of records

[219] According to Donovan, the Voting Section stopped sending monthly charts to the Division leadership because the Division leadership was no longer specifically requesting them, "not because of an express policy change" by anyone. The Records Analyst added that, as time passed, new Division leadership personnel did not seem to have a frame of reference for why they were receiving the charts. However, the Records Analyst stated that the Voting Section still maintains its own internal charts.

requests to prevent potential abuse and has intervened on several occasions to address individual efforts to circumvent the formal process.

1. Systemization of Records Requests and Responses

Donovan told the OIG that early in her tenure as the attorney overseeing records requests she discovered that the Voting Section lacked a coherent system for processing records requests despite the prior measures. For example, Voting Section staff rarely retained copies of the requests, the responses recommended to the FOIA Office, or the final responses, and the few copies that were retained were not organized by date or requester. Donovan also discovered that Voting Section personnel who were not assigned to FOIA matters were receiving and forwarding records requests to the FOIA Office without proper routing memoranda and without notifying her or the Records Analyst. Donovan attributed the weaknesses in compliance with prior records management directives to the significant staff turnover during this period. Donovan told the OIG that prior to her tenure "there was nobody really playing the cop" regarding compliance with procedures for handling records requests.

Donovan took several steps to rectify these problems. In April 2007, in response to her concerns, Voting Section Chief Tanner issued a Section-wide e-mail emphasizing that all requests for information other than in active cases should be treated as records requests and be routed immediately to the Voting Section FOIA team for proper processing. Donovan sent two similar Section-wide e-mails in August 2007, which further emphasized that records requests must be in writing and staff should not make any commitments on a response time. Donovan told us that emphasizing the records procedures was necessary to ensure that requests were tracked properly and handled consistently.

Since 2008, the Voting Section has followed formal procedures established by Donovan for tracking FOIA requests. Each request is memorialized in a log-in memorandum within a few days of receipt, and the request and memorandum is then forwarded to the Division's FOIA Office. Each record request is retained electronically together with the log-in memorandum, copies of any material collected in response to the request, and copies of any subsequent memoranda created in connection with preparing the response. The Voting Section follows similar record retention procedures to track responses to pending Section 5 submission files. We confirmed that the Voting Section had created these electronic records consistent with the procedures that had been described to us.

In January 2009 and October 2010, Donovan held training sessions for Voting Section staff to ensure that they knew how to properly handle records requests. Donovan held the January 2009 training on Voting Section records requests procedures for Section 5 staff because she had received several questions on FOIA procedures from Section 5 analysts. She also told the OIG

that training for Section 5 staff was important because the majority of records requests involve Section 5 file materials (open or closed), and thus Section 5 staff had the greatest potential to mishandle requests or send them directly to requesters if they were not familiar with the records requests procedures. Donovan worked with other Voting Section managers to place her written guidance from the January 2009 training session on the Section's Intranet for all Section employees to observe. In October 2010, Donovan held a similar training session for Section 5 staff and new attorneys to further ensure that Voting Section staff were aware of and observed proper procedures for records requests.

2. Response to Incidents of Potential Favoritism from 2006-2008

Donovan told the OIG that early in her tenure as the attorney overseeing records requests she had to clamp down on Voting Section personnel because of periodic incidents in which some records requesters used their contacts in the Section to receive records outside the FOIA process. For example, she told the OIG that she heard occasionally from 2006 to 2008 that determination letters or STAPS reports had been sent out without her knowledge. As these incidents came to her attention, she addressed them with staff.

In addition, at Donovan's request, Voting Section managers and FOIA Office managers addressed efforts by former Voting Section managers to obtain records directly from staff.[220] For example, we were told that former Voting Section Chief Tanner (who had left the Section in December 2007) asked various staff in 2008 to send records to him directly. In response, Section Chief Christopher Coates stated in an e-mail in July 2008 to Voting Section managers and staff handling records requests that Tanner "needs to go through the FOIA and take his place in line" just like any other requester.

Additionally, Donovan told the OIG that she took similar action with regard to another former Voting Section manager who sought records directly from Section employees. According to Voting Section staff, this former manager also routinely requested expedited responses by claiming that the responsive materials were needed for litigation.[221] Donovan said that she initially expedited these requests but realized after she gained more experience with Department FOIA regulations that this claim was being used improperly to

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[220] In Chapter 4, Section III, we discuss the issue of unauthorized disclosures by Voting Section employees of confidential Voting Section information, including to outside counsel who was a former Voting Section manager.

[221] Under the Department's FOIA regulations, a FOIA request may qualify for an expedited response where it is found that the subject matter of the request involves, among other things, "the loss of substantial due process rights." *See* 28 C.F.R. § 16.5(d).

receive expedited treatment. When the former manager persisted in these requests, Donovan consulted with the FOIA Office, which sent the former manager a letter to formally notify him that his request for a priority response due to anticipated, fast-track litigation did not qualify for expedited treatment under Department FOIA regulations.

III. Factual Findings

The allegations contained in the blog post by former Voting Section attorney Christian Adams identified 18 individuals who had allegedly received faster compliance with their records requests than had individuals or organizations allegedly with conservative backgrounds. Adams's blog post identified these 18 requesters as individuals that supported "liberal" issues or were "politically connected civil rights groups." The list of "liberal" groups identified by Adams included requesters affiliated with such organizations as NAACP LDF, MALDEF, the ACLU, and the Native American Rights Fund, and the alleged response times ranged from same-day service to 20 days. Adams's blog post provided few details about these requests beyond the requester's name, any affiliated organization, and alleged response time. It provided little to no information regarding the type or scope of the request. Adams's blog post asserted that the alleged quick response time for these requesters was due to their political affiliation or ideology.

Adams's blog post also described 12 requesters who it identified as "well-known conservatives, Republicans, or political opponents" of the current administration. Adams's blog post stated that these requesters had to wait for long periods of time before getting responses from the Division. This list included Republican office-holders and other requesters affiliated with such organizations as the Washington Times, the Center for Individual Rights, and Judicial Watch. The alleged response times for these requesters were at least four months or longer. As with the 18 "liberal" requests, Adams's blog post provided few details about the 12 "conservative" requests beyond the requester's name, any affiliated organization, and alleged response time. It similarly provided little to no information regarding the type or scope of the request. Adams's blog post asserted that the alleged slow response time for these requesters was likewise due to their political affiliation or ideology.

Our review investigated the issue of differential response times for Voting Section records requests from several angles. In subpart A, we examine how the type of records being requested affected the response times. In particular, we investigated whether the allegedly faster response times reported in Adams's blog post for some requesters were associated with requests for high priority, easily assembled records, while the longer response times were associated with complex or non-priority requests under Voting Section policies. In subpart B, we examine the impact of a rapidly increasing backlog of record requests

contributing to the differences in response times reported in Adams's blog post. In subpart C, we examine three of the particular comparisons made in Adams's blog post. In subpart D, we examine the Voting Section's responses to other record requests made by organizations identified as conservative in Adams's blog post. In subpart E, we describe the results of our review of tens of thousands of Voting Section e-mails in evaluating whether there is evidence of ideological bias in responses to records requests.

A. Role of Request Type in Response Times

Our review of Voting Section records revealed that much of the difference in response times for the requests cited in Adams's blog post was attributable to the type of request made. We determined that 15 or 16 of the 18 requests identified as receiving preferentially expedited treatment sought pending Section 5 submission files (or records related to pending submission files).[222] As discussed in detail above, an expedited response for a pending Section 5 submission file request is consistent with Department regulations and Voting Section policy due to the limited period to comment on a proposed voting change.

Our review also determined that none of the 12 requests from conservatives described in Adams's blog post sought files related to pending Section 5 submissions. Indeed, our review of the larger population of requesters since January 2009 did not identify any conservative requesters seeking records in this category. Hans von Spakovsky, former Counsel to the AAG, provided information to the OIG that may help explain this data. He told the OIG that in his experience the Heritage Foundation, where he has been employed after leaving the Department, does not comment on pending Section 5 submissions and such activity is usually not an issue of importance to conservative organizations. He told the OIG that "there's probably a dozen liberal advocacy groups that work on voting issues," that "specialize in looking at voting issues and they comment a lot on Section 5 submissions when they get [to the Department]." By contrast, von Spakovsky said that he could "not think of a single conservative organization that concerns itself or concentrates on voting issues." However, von Spakovsky told the OIG that conservative

[222] The uncertainty regarding whether the number is 15 or 16 stems from the following: Adams's blog post lists a request from Jenigh Garrett of the NAACP which allegedly received expedited treatment of "same day service." Garrett made multiple requests to the Voting Section since 2009, two of which received expedited responses because they were for pending Section 5 submission files, and one of which was for a *closed* Section 5 file. The latter request was shown as receiving same-day service in Voting Section records, although we determined the response was in fact sent out approximately one month after the request was originally made. We do not know which of Garrett's submissions was referred to in Adams's blog post, which is why the number of responses relating to pending Section 5 submission files may be 15 or 16.

organizations are spending more time recently on voting issues as a result of Voting ID proposals.

Moreover, our review of Voting Section records revealed many instances where the requesters identified in Adams's blog post as being affiliated with "liberal" organizations received slow responses from the Division when they made requests for records not related to pending Section 5 submissions. For example:

- Raul Arroyo-Mendoza (Advancement Project): Arroyo-Mendoza typically received pending Section 5 submission files within 5 days after he requested them. However, the Voting Section required 18 months to respond to his March 2009 request for a closed Section 5 submission file.
- Jenigh Garrett (NAACP): Garrett has made multiple records requests to the Voting Section. We found that Garrett waited more than two and a half years for a response to a request made in January 2008 for records regarding state compliance with Section 2 of the NVRA.
- Laughlin McDonald (ACLU): McDonald requested records regarding two closed Section 5 submission files in August 2009. Despite the fact that it had not yet responded to his request, on May 1, 2012, the Division FOIA Office sent a notice letter to McDonald to inform him that his request would be closed unless he contacted the Office within 30 days and expressed a continued interest in obtaining the requested records. The FOIA Office did not receive a response from McDonald to the notice letter and his request was administratively closed on June 28, 2012.

We further found that, as of July 2010, when the Division FOIA Office began a push to complete the 10 oldest pending requests, the NAACP had 2 of the oldest unaddressed FOIA requests pending with the Voting Section, 1 since January 2008 and another since July 2008.

Our review also revealed examples of expedited responses for requests involving the Republican Party or offices run by a Republican. For example:

- South Carolina Attorney General's Office: The South Carolina Attorney General's Office received a response in August 2009 five days after its request for a 1988 closed Section 5 file, which required retrieving and reviewing materials from the Federal Records Center and on microfiche. The Voting Section processed the response expeditiously after the state said it needed materials quickly because it had been sued under Section 5 of the Voting Rights Act.

- Rick Boyer (Attorney in Virginia): In January 2012, Boyer received a response 15 days after his request for records regarding closed Section 5 files in which the Department approved the procedures used by the Republican Party of Virginia to certify candidates who can appear on primary ballots for the presidential election. The Voting Section expeditiously processed the response, in conformance with the request, due to the then upcoming Republican presidential primary election in Virginia in early March 2012.

These response times are consistent with Voting Section policy, as discussed above, to expedite where possible requests involving time constraints, provided that such requests are relatively narrow and records can be located and processed quickly.

B. Role of Increase in Backlog in Differences in Response Times

We determined that another factor in the differences in response times has been the dramatic increase in the number of records requests made to the Voting Section in recent years, which has resulted in a growing backlog of non-priority requests. We found that this backlog has disproportionately affected the "conservative" requesters referenced in Adams's blog because, unlike the "liberal" requesters he referenced, those requesters generally had not made requests for documents in any priority categories.

Donovan told the OIG that the Voting Section has experienced a large increase in the backlog of pending records requests in recent years. She also stated that the current backlog will take more than one year to address. Therefore, she instructed the Records Analyst to call every requester who made a request during the last year to inform them of the substantial backlog and determine if a narrower response, such as providing a determination letter or STAPS report, will resolve their request. The requesters are informed that if they still wish to receive something other than a priority pending file or a simple request, the response may take more than one year.

The data regarding demand for Voting Section records and backlog of unfilled requests showed a significant increase since 2006. In September 2006, for example, the Voting Section only had four pending records requests. By comparison, in January 2012 the Voting Section had more than 170 outstanding records requests. Since 2008, the number of unfilled requests has increased as follows:

- As of January 1, 2008 – 24 outstanding requests;
- As of January 1, 2009 – 46 outstanding requests;
- As of January 1, 2010 – 62 outstanding requests;

- As of January 1, 2011 – 63 outstanding requests; and
- As of January 1, 2012 – 172 outstanding requests.

This trend was largely unchanged at the end of Fiscal Year (FY) 2012 (September 30, 2012). At that time, the Voting Section had 156 of the 209 pending records requests in the Division, or 75 percent of the pending records requests.[223]

Witnesses told us that this backlog is attributable to a rapid increase in the number of requests made for Voting Section records since 2008.[224] According to Division records, the Voting Section received 264 records requests in 2011, comprising approximately 46 percent of all records requests made to the Division. As shown in the table below, the total number of requests for Voting Section records has increased since FY 2009 and has represented a high percentage of all requests made to the Division.

Table 6.1 – Approximate Number of Requests Since FY 2009

FY	Total Division Requests	Voting Requests	Percent Voting
2009	475	166	35%
2010	446	165	37%
2011	569	264	46%
2012	513	191	37%

The Chief of the Division's FOIA Office, Nelson Hermilla, told the OIG that the Voting Section has received the most records requests among the 11 Division sections and the Division's leadership since 2009.[225]

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[223] In FY 2012, the Voting Section closed 170 requests, or 29 percent of the Division's 580 FOIA requests.

[224] The Chief of the Division's FOIA Office, Nelson Hermilla, told the OIG that the Division's FOIA backlog is "higher than it's been . . . for at least 16 years" due to the large accumulation of requests in the Voting Section.

[225] The data in Table 6.1 is for fiscal years, ending on September 30. The Division received more records requests in FY 2011 than all but the largest components or offices within the Department (such as the Federal Bureau of Investigation, Bureau of Prisons, Executive

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We were told that several factors account for the increase in records requests and the resulting growth in the backlog. First, the Voting Section experienced significant demand for pending Section 5 submission files involving redistricting submissions after the 2010 census, as reflected in the substantial growth in voting requests from 165 in 2010 to 264 in 2011 shown in Table 6.1. Donovan told the OIG that the heavy redistricting load is a significant reason for the recent backlog increase. In addition, the Voting Section Records Analyst told the OIG that they are spending virtually all of their time now on pending Section 5 submission file requests. Donovan also told the OIG that responding to these priority requests for pending redistricting submissions has increased processing time because the Voting Section must perform a line-by-line file review for potential privacy or other required redactions.

Second, the Voting Section adopted technological improvements that made it easier for individuals to request records, particularly pending Section 5 submission files. For example, since 2009, records requests can be submitted by e-mail as discussed above. In addition, individuals can now sign up to receive electronic notices of Section 5 activity from the Voting Section, which generates additional requests for pending Section 5 submission files.

Third, the Voting Section has received several priority requests from Congress and the U.S. Commission on Civil Rights since 2009 pursuant to their oversight authority. Such requests are not FOIA requests. However, Voting Section Chief Chris Herren told the OIG that these requests cannot "just be put in a queue." Herren also told the OIG that responding to the oversight requests on the New Black Panther Party case from the U.S. Commission on Civil Rights "completely consumed" Voting Section staff for a significant period. Herren said to us that the multitude of oversight requests as a whole created the "perfect storm" for the increase in their backlog, which has been compounded by the 2010 census and demand for pending redistricting submissions.

Based on the foregoing, we found that the large increase in demand for priority record requests since 2008 has been a significant factor in longer response times for all requests, except priority requests for pending Section 5 submission files or requests for records that are very easily collected. The increasing backlog has exacerbated the differences in response times between priority requests and non-priority requests.

Office for Immigration Review, Executive Office for United States Attorneys, United States Marshals Service, and the Criminal Division) according to data from the Department of Justice Office of Information Policy.

C. Examination of Particular Comparisons

In his blog post, Adams also examined what he considered to be similar requests made by individuals with ideologically different backgrounds, and highlighted what he believed was disparate treatment by the Voting Section in responding to those requests. We summarize our findings on these items below.

1. Ashby/Somach/Hebert

In Adams's blog post and his interview with the OIG, he alleged that Chris Ashby, a Republican election attorney, received a slower response ("nearly eight months") to his December 2008 request for 5 submissions made under Section 5 of the VRA, while Susan Somach of the Georgia Coalition for the Peoples' Agenda received "the same type of records" for 23 submissions in just 20 days. In his interview with the OIG, Adams also compared the treatment of Ashby with that of Gerry Hebert, a former Voting Section manager who in February 2009 sought comments submitted in a 1-month period for a pending Section 5 submission file. Our review of these examples revealed that Somach and Hebert's requests related to *pending* Section 5 submission files (which were given the highest priority for response) while Ashby's request related to *closed* Section 5 submission files (which were not).

Additionally, Adams told the OIG that Ashby (who he described as a Republican) and Hebert (who he described as a "partisan liberal") sought "virtually identical information." He also stated to the OIG that this identical information was at the Voting Section's "fingertips" and "not off in some archive." In fact, our review revealed the opposite to be the case.

Donovan told the OIG that responding to Ashby's request for five closed submissions files required time to determine the breadth of responsive information and where it was located. Contemporaneous documents regarding Ashby's request showed that some of the five closed files for Ashby's request had to be retrieved from the Federal Records Center, and one of the closed files in the Federal Records Center could not be located. In addition, contemporaneous documents showed that Division staff had difficulty locating one closed file that was not in the Federal Records Center and had not been entered into STAPS. Ashby was sent a response to his request for five closed Section 5 files approximately 8 months after his request was made, once all the responsive materials could be located, reviewed, and processed.

Donovan told the OIG that Hebert represented a jurisdiction that submitted a Section 5 submission to the Department for preclearance. In February 2009, Hebert requested any comments from the public on the then-pending submission received during the past month in order to be able to respond to them on behalf of the jurisdiction. Contemporaneous documents

regarding Hebert's request showed that records responsive to his request for any comments during the 1-month period were easily located by reviewing the file for the pending submission and checking with Division staff assigned to the submission. Donovan also told the OIG that it required less than one day, and possibly just one hour, to gather the responsive materials and send out a response to the Hebert request.

Therefore, in addition to Ashby's request being for non-priority materials while Hebert's was for priority materials, we found that the Ashby request was not comparable to the Somach or Hebert requests in difficulty of processing.

2. Media Requests for New Hire Resumes: Boston Globe and Pajamas Media (PJM):

Adams's blog post also alleged that Charlie Savage, then a reporter for the *Boston Globe*, received a prompt response ahead of the statutory deadline for a request seeking the resumes of new hires in the Division during the Bush Administration. It also alleged that Pajamas Media (PJM) had to file a lawsuit to try to obtain the "exact same information" for new hires during the Obama Administration. Our investigation revealed that these requests were not comparable in scope or timeframe.

In February 2006, Savage sought the resumes of new hires for three sections in the Division during the period from 2001 to 2006. The Division FOIA Office, not the Voting Section, was responsible for obtaining the responsive materials to this request from the HR Office and responding to the request. We found that the FOIA Office did not substantively respond to the Savage request ahead of the statutory deadline as stated in Adams's blog post. Rather, the FOIA Office sent its standard form letter to Savage approximately one week after receiving his request. The letter acknowledged receipt of Savage's request, provided a FOIA tracking number, and stated that there may be some delay in processing his request.

The FOIA Office provided Savage with a substantive response containing most of the responsive resume material on March 29, 2006, over one month after his request. A follow-up response was provided on June 28, 2006, over four months after his initial request, which largely furnished all remaining responsive and releasable materials.[226]

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[226] The FOIA Office's June 28 response notified Savage that there were a few additional responsive documents that contained potentially sensitive information regarding applicants' work products with other Department of Justice components and the Department of State. The FOIA Office informed Savage that it would consult with these other offices and the Department of State regarding a release recommendation for these documents. On June 14, 2007, the FOIA Office provided one additional document to Savage that the Department of State agreed to release.

In October 2010, Richard Pollock of PJM sought the resumes of all new hires for all 11 sections in the Division during the period from 2001 to 2010.[227] As with the Savage request, the Division' s FOIA Office was responsible for obtaining the responsive materials to this request from the HR Office and formally responding to the request. As with the Savage request, the FOIA Office sent a form letter to Pollock approximately one week after receipt of his request. The letter, like the letter to Savage, stated that there may be some delay in processing his request because of the large number of requests received by the Division.

Hermilla told the OIG that the request from PJM was broader in scope and timeframe than that of the Savage request. In addition, Division records showed that the backlog of pending Voting Section requests was far greater in 2010 than in 2006, as noted above.

According to Adams's blog post, PJM filed a lawsuit against the Department regarding its FOIA request in January 2011. Hermilla told the OIG that PJM sued the Department "primarily on the basis of delay" in receiving a response to its request. On April 21, 2011, PJM and the Department reached an agreement whereby PJM agreed to significantly narrow the scope of PJM's request. PJM's narrowed request, as memorialized in a letter from the Division's FOIA Office to counsel for PJM on May 13, 2011, sought the resumes of new hires in all 11 sections in the Division from January 21, 2009, to April 21, 2011. The FOIA Office provided counsel for PJM with responsive resume materials on May 13, 2011.[228]

Based upon the foregoing, the total response time to the PJM request was essentially seven months (October 6, 2010 to May 13, 2011), while the total response time to the Savage request was essentially four and a half months (February 6, 2006 to June 28, 2006). However, after PJM agreed to narrow the scope of its request, it received a response less than one month later, which was faster than the initial response to Savage on March 29, 2006.

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[227] Adams's blog post indicated that PJM initially submitted its request in the spring of 2010, and that it renewed its request by certified mail on October 13, 2010, after not receiving a response from the Division to its initial request. According to Hermilla, no record of a request from PJM for Division resumes exists prior to a request dated October 6, 2010, which was date-stamped as received on October 13, 2010.

[228] Sometime between July 2011 and September 2011 in PJM's lawsuit proceedings, the Department provided PJM with a 3-page document that contained an itemized list of personal interest/hobby information that was redacted on privacy grounds from the resumes provided on May 13, 2011, without disclosing any identities. On September 1, 2011, PJM and the Department stipulated to the dismissal of PJM's complaint.

3. National Public Radio (NPR)/PJM

Adams's blog post also alleged that National Public Radio (NPR) received a prompt response to its request, while journalists from "conservative media" received no responses at all. In his interview with the OIG, Adams further stated that Ari Shapiro of NPR and Jennifer Rubin of PJM sought "similar sorts of requested information," but NPR was sent a response in five days and PJM was still waiting for a response. Our review revealed that these requests were not comparable in complexity or breadth.

On February 23, 2009, NPR requested copies of public settlement agreements filed with courts by the Division during two 1-month periods: January 19, 2008, through February 19, 2008; and January 19, 2009, through February 19, 2009. Contemporaneous e-mails relating to this request showed that virtually all responsive material was retrievable in less than five minutes merely by printing a report from a Division database. The FOIA Office then conferred with Division sections to ensure that no information was missing from the computer report. Donovan told the OIG that she spent approximately 10 minutes on the NPR request. On March 25, 2009, the Division responded to the request.

On May 28, 2009, Jennifer Rubin of PJM sent a letter to the Division's FOIA Office that contained 21 separate requests for records of communications from or to certain managers, attorneys, and analysts in the Voting Section on numerous topics, such as hiring decisions, travel requests, investigations, outside publication of articles, and interaction with certain advocacy groups. Hermilla told the OIG that Rubin's request was "clearly complex" based on the number of separate requests and the likely potential for a significant volume of records. He said that Rubin's request was "among a select . . . 5 percent" of requests that have involved over 20 separate requests for records in his 27 years in the FOIA Office. He also said that many of the requests targeted individual attorney communications, thus raising potential personal privacy issues and issues of Voting Section enforcement sensitivity. Therefore, a "line-by-line" review of responsive materials would be required.

On October 4, 2010, Hermilla sent a letter to Rubin asking if she would consider narrowing the scope of her request to fewer than 21 items to possibly receive a quicker response. Hermilla told us that Rubin never responded to this letter.

Donovan told the OIG that the review of the sensitive material responsive to this request has been "very time-consuming." For example, she told us that one Voting Section attorney alone had 8,000 e-mails that had to be reviewed in processing Rubin's request. Additionally, Donovan told us that she has devoted significant time to address this broad request, but must review and

process responsive materials by herself because of the sensitive personal and managerial information targeted by the request.

On September 27, 2012, the Division's FOIA Office closed the Rubin request by providing Rubin with the responsive materials to her request. We are concerned that a FOIA request took over 3 years to complete. Nevertheless, we found that the NPR and PJM requests were not closely comparable with regard to the difficulty of finding and processing the responsive material. The bulk of the NPR request could be completed in minutes without the need to review sensitive information. The PJM request was the opposite.

Similarly, we found that the requests by journalists from other organizations that are referenced as conservative in Adams's blog post (*The Washington Times, Human Events*, and the group Judicial Watch) were also not comparable to the NPR request. The requests by most of those journalists, which are discussed below, sought records relating to the NBPP case (much of which was privileged). By contrast, the NPR request was for public settlements that had been filed in federal court during a 2-month period.

D. Other Requests from Alleged Conservative Requesters

We also examined the Voting Section's responses to other record requests made by organizations identified as conservative in Adams's blog post. None of these requests sought pending Section 5 submission files or were otherwise eligible for expedited processing under the Voting Section's procedures. For example, 6 of the 12 individuals or organizations cited in Adams's blog post as receiving slow response times because they were "conservatives, Republicans, or political opponents" of the current administration made requests in the summer of 2009 related to the NBPP case.[229] With one exception, the FOIA Office sent responsive materials to each of these requesters on the same day (February 9, 2010), after a 7- to 8-month wait.[230] These requests were voluminous and involved sensitive materials, such as evidence collected and records regarding the dismissal of the matter and decisions not to bring criminal charges, requiring line-by-line review for exempt information. Donovan told us the requests also were considered sensitive because there was a pending OPR investigation of the NBPP case.

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[229] These six requesters cited in Adams's blog post were: Congressman Wolf, State Representative Stephen Barrar (R-PA), Jed Babbin (editor at *Human Events*), Jerry Seper (reporter for *Washington Times*), Jenny Small (researcher for Judicial Watch), and Michael Rosman (General Counsel for Center for Individual Rights). The NBPP case was a high-profile matter, which is discussed in Chapter Three.

[230] Congressman Wolf was sent an earlier response, on September 11, 2009, by the Office of Legislative Affairs.

We found four other requesters in the summer of 2009 who sought materials related to the NBPP case in addition to the six cited in Adams's blog post. Three of these requesters were private citizens and one was the Director of the Equal Opportunity Office at the University of Georgia. Each of these four requesters also received a response on February 9, 2010, after a 7- to 8-month wait. Given the extensive nature of the requests, which encompassed large amounts of privileged materials, and the consistency in response times for all requesters, we found that a 7- to 8-month response time did not reflect ideological or political bias.

Additionally, Adams's blog post identified a request from Ben Conery of *The Washington Times*. On November 11, 2009, Conery requested records pertaining to the Department's objection to the Kinston, North Carolina Section 5 submission. As discussed in Chapter Three, by that date, the Section 5 matter was no longer pending, as the Department had interposed its objection to the proposed change in August 2009, and the subsequent lawsuit was not filed until April 2010. Accordingly, the request was not subject to priority treatment by the Section. Voting Section records and witness statements demonstrated that the Conery request was processed and sent by the Voting Section to the Division FOIA Office on April 16, 2010, the same day as six other requests that sought records pertaining to the same matter.

Adams's blog post also identified a request from Jason Torchinsky, who he described in his post as an "ace GOP lawyer," alleging that as of February 2011, Torchinsky received no response at all to his request (which was for a closed Section 5 submission file from 2005). Our review of Voting Section records indicated that Torchinsky requested the closed Section 5 submission file on August 19, 2009, and withdrew his request on August 30, 2010, after Torchinsky had obtained the submission from the locality that submitted it.

Adams's blog post also stated that as of February 2011, Jim Boulet of the English First Foundation had received no response to his request for Division records. Voting Section records showed that on October 22, 2008, Boulet submitted a request to then-Attorney General Michael Mukasey for materials and information from a Department symposium on voting rights enforcement that had been held at the National Advocacy Center. The letter requested materials including audio and video recordings and e-mails relating to "the Department's interpretation of the statement 'you must be a citizen to vote' to be voter suppression" purportedly made at these meetings.

Boulet's request was forwarded to the Division on December 8, 2008.[231] The request did not seek information concerning a pending Section 5

[231] The date stamp on the letter and the date on the routing slip seem to reflect that the Department did not actually receive the Boulet request until December 8, 2008.

submission and did not qualify for expedited treatment under Voting Section policy. Donovan told the OIG that the nature of the request was challenging because it took her time to discern the specific statement Boulet referenced, let alone the Department's interpretation of it, and construct searches to find responsive materials. Further, Donovan told us, and contemporaneous e-mails showed, that the request required coordination with and a search of responsive materials from Division leadership offices in the Division, the Criminal Division, and others, which increased the time required for a response. Voting Section records show that Boulet received a response to his request in September 2010, which stated that the Division was unable to locate responsive documents.

E. OIG Review of Internal Voting Section E-mails for Evidence of Ideological Bias in FOIA Responses

In addition to examining the particular record requests and responses identified in Adams's blog post, the OIG reviewed tens of thousands of e-mails relating to FOIA responses in the Voting Section between 2001 and 2010, and conducted follow-up interviews in instances where we had questions regarding the timing of the responses. We did not find any evidence during this process of ideological bias in handling FOIA requests. We did find that some "liberal" civil rights groups complained to Division leadership about the speed of Voting Section responses to their records requests, but we did not find evidence that these complaints resulted in treatment for these groups that was inconsistent with the priority system established in the Voting Section, as described above. We summarize the general complaints we observed from civil rights groups and two specific cases below.

Voting Section Chief Herren told the OIG that "liberal" civil rights groups met with Division leadership early in this administration to "complain quite bitterly" that the Voting Section was not being as responsive as it had been in the past to their records requests. Herren summarized their complaints to the OIG as follows: Civil rights groups complained that the Voting Section had "gone backwards" in terms of general openness. They were critical of the Voting Section's policy on privacy redactions, which they perceived unduly slowed the pace of responses to their requests. They claimed that in the past they could merely call the Voting Section records staff with their requests and they would receive them promptly without delay for redactions or a queue process.

Herren said to the OIG that these groups put "a lot of pressure" on the Voting Section to be more responsive and make information more available. However, Herren told the OIG that it was not possible to address most of their complaints. Referring to the changes to Voting Section procedures described in Section II, above, Herren said that Donovan had transitioned the Section's records response process away from an ad hoc system to one that was

systematic and tracked with institutional controls. Herren told the OIG that he explained to Division leadership the system and controls that had been put in place to prevent troublesome incidents, like the 2003 incident involving disparate treatment of identical requests as described in Section II.D., above. Herren told the OIG that he informed Division leadership that Donovan had refined the process with the FOIA Office to institute the proper controls to track requests, train employees on proper procedures, and treat requesters consistently. Herren said to the OIG that he did not recall any "push back" or "pressure [being placed on the Voting Section] to do things differently" from Division leadership after this process was communicated to them.

Two specific cases of individuals from civil rights groups complaining to Division leadership about their perception of slow responses to their requests for Voting Section records are highlighted next.

1. League of United Latin American Citizens

In August 2009, an attorney for the League of United Latin American Citizens (LULAC), complained to Julie Fernandes, then a DAAG in the Division, about slow responses to requests for Section 5 files. The LULAC attorney claimed that he was able to obtain these records "very quickly" from the Voting Section in prior administrations simply "by placing a phone call" to Voting Section staff handling Section 5 issues. In response, Fernandes asked Herren for the background and status regarding the pending LULAC requests. Herren provided Fernandes the background on the request, which Donovan compiled for Herren.

The LULAC requests in question were made on June 29, 2009, and August 10, 2009, and sought Section 5 submission files. The August 10 request was for a pending submission and as such was entitled to expedited treatment. Voting Section personnel were able to complete that request for the pending Section 5 file request within three weeks. The second requested file was for a closed Section 5 submission. Donovan told us that she had originally placed this request in the regular, non-priority queue because it was for a closed Section 5 file. After the status inquiry and her re-review of the request, she determined that the request was related to the pending Section 5 submission, as it involved the same county, and was needed in order for LULAC to comment on the pending Section 5 submission.[232] As discussed above, expediting a closed Section 5 file request in these circumstances would be consistent with Voting Section policy. However, it still took the Voting Section over three months to complete and send a response to LULAC, even though the LULAC attorney significantly narrowed the request in early

[232] Donovan told the OIG that the closed file request would have "sat in queue" in accordance with policy if it had been unrelated to the pending Section 5 submission file.

September 2009. We found no evidence to conclude that LULAC obtained preferential treatment as a result of contacting Fernandes.

2. Mexican American Legal Defense and Education Fund

In January 2010, counsel for MALDEF complained to Fernandes about a slow response by the Voting Section to a request for Section 5 files, which were requested by MALDEF on October 26, 2009, and were not fully sent out until January 5, 2010. By the date of the complaint to Fernandes, MALDEF had already received the response to the records request.

Contemporaneous documents and follow-up interviews with Voting Section staff revealed that the request in question was for a file that could have been processed quicker because a response had been prepared for another requester a year earlier. In responding to Fernandes's inquiry, Voting Section staff explained to Fernandes at the time that demand for Voting Section records had increased significantly, including time-sensitive pending requests, and that staff were trying to address voluminous FOIA requests on the NBPP case. According to contemporaneous Voting Section e-mails, Fernandes agreed that MALDEF's complaints were unwarranted and the response time was "more than reasonable" once she understood the background regarding the request and response and the existing demand for Voting Section records. We did not find any evidence that the complaint from the counsel for MALDEF to Fernandes resulted in any future preferential treatment for MALDEF or political interference in subsequent records requests by MALDEF.

Donovan told the OIG that in no case did she feel pressured by Division leadership to expedite requests simply because managers wanted it done. She told us that "there needed to be a business reason to expedite [requests]," and that requests were not expedited on the basis of a requester being a friend of Division leadership or having access to Division leadership that others did not have.

IV. Analysis

As noted above, the Standards of Ethical Conduct for Executive Branch Employees require employees to "act impartially and not give preferential treatment to any private organization or individual" in the performance of official government business. 5 C.F.R. § 2635.101(b)(8). We did not find evidence that differences in response times to record requests made to the Voting Section were attributable to preferential treatment based on the ideological affiliations of the requesters.

As detailed above, the vast majority (15 or 16 out of 18) of the alleged expedited record responses cited in Adams's blog post were made in response to requests for pending Section 5 submission files. Requests for pending

Section 5 submissions have been given the highest priority under Voting Section implementing regulations and longstanding policy due to the need to provide the information in time to enable the requester to file public comments within the 60-day period permitted under law. Based on our review, it appears that numerous organizations commonly perceived to be liberal have submitted requests for records of this type over the years. By contrast, we were unable to identify any conservative organizations that submitted such requests during the period of our review. This imbalance among requesters explains the vast majority of the apparent discrepancies in response time cited in Adams's blog post.

We also examined several comparisons of individual responses highlighted in Adams's blog post. As detailed above, in each case we found a valid, non-ideological explanation for differences in the response times. Often, the requesters identified as "conservative" submitted requests for records that were more voluminous and difficult to locate, and required time-consuming reviews to protect private personal information or privileged material. For example, in his blog post and interview, Adams compared quick response times for two requesters he described as liberal (Susan Somach and Gerry Hebert) with a slow response time for a requester he deemed conservative (Chris Ashby). The former requests were for readily available, easily assembled materials as they related to pending Section 5 submission files; the latter was for many closed files, some of which had to be retrieved from the Federal Records Center, and some of which could not be readily located. Similarly, the request for new hire resumes from the Boston Globe reporter was substantially narrower and more limited in time than the subsequent request for resumes from PJM, at least until the latter was narrowed as to years, and then it was responded to relatively quickly. Moreover, as discussed in Section II.B., "multi-track" processing of FOIA requests, depending on scope and complexity, is expressly authorized under FOIA and Department implementing regulations. *See* 5 U.S.C. § 552(a)(6)(D)(i); 28 C.F.R. § 16.5(b). In sum, we found no evidence supporting the allegation that differences in response times were the result of partisan or ideological favoritism.

We also reviewed tens of thousands of e-mails relating to FOIA responses in the Voting Section between 2001 and 2010, and conducted follow-up interviews where we found communications suggesting the possibility of ideological bias or political interference in a records response from the Voting Section. Our review did not find any substantiation of ideological favoritism or political interference in such responses.

The procedures for responding to requests for Voting Section records were substantially regularized beginning in 2003, and these procedures were strengthened beginning in 2006 with Donovan's appointment to oversee records requests. We found that these procedures have helped to protect against bias in responding to records requests.

We are concerned by the fact that the Voting Section currently has a substantial backlog of records requests. A main factor in the current backlog is the large increase in requests for pending Section 5 submission files, which receive first priority in response under Department regulations and policy. *See* 28 C.F.R. § 51.50(d). As noted above, these requests tend to come almost exclusively from individuals associated with liberal organizations or advocacy groups. As the Voting Section continues to work through this backlog, the dearth of requests in this priority category coming from conservative groups or individuals could create a deceptive appearance, without more information, that the Voting Section favors liberal requesters over conservative requesters. Again, we concluded that any such appearance would likely be the result of differences in the types of records that have typically been requested by liberal and conservative requesters, and that no inference of political or ideological favoritism should be drawn from it where this key difference exists.

Recommendation:

To address the mounting backlog for non-pending Section 5 file requests, we recommend that the Voting Section consider devoting at least temporarily more resources to handling such requests. We are mindful of the fact that most components are pressed for resources to fulfill their many obligations and that budgets have shrunk. However, the Voting Section and Division leadership should consider temporarily assigning additional staff and managers to help process the increased demand for Voting Section records, in order to reduce the current backlog. Such a stopgap measure is consistent with past measures taken by other agencies under similar circumstances, according to findings and guidance from the Department's Office of Information Policy.[233]

[233] *See* Office of Information Policy, 2010 Summary of Agency Chief FOIA Officer Reports, Section II.D.4., and Section V.F., (noting how other agencies utilize non-FOIA staff to assist on a temporary basis during peak workload periods and to address backlogs) (http://www.justice.gov/oip/foiapost/2010foiapost23.htm (accessed March 8, 2013)).

CHAPTER SEVEN
CONCLUSION

This review examined several issues: the types of cases brought by the Voting Section and any changes in the types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner; and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters. We focused on the period since 2001, addressing enforcement decisions made during the last two administrations and allegations of harassment during the same period. Our review was subsequently expanded to address allegations about how the Voting Section processed information requests, and about hiring practices in the Voting Section from 2009 to 2011.

As detailed in Chapter Three, our examination of the mix and volume of enforcement cases brought by the Voting Section revealed some changes in enforcement priorities over time, but we found insufficient support for a conclusion that Division leadership in either the prior or current administration improperly refused to enforce the voting rights laws on behalf of any particular group of voters, or that either administration used the enforcement of the voting laws to seek improper partisan advantage. Although we had concerns about particular decisions in a few cases, we found insufficient evidence to conclude that the substantive enforcement decisions by Division leadership in Voting Section cases were made in a discriminatory manner. Our conclusion encompasses our review of some of the more controversial enforcement decisions made in Voting Section cases from 2002 through 2011, by Division leadership in both the prior and current administrations.

Notwithstanding this conclusion, our investigation revealed several incidents in which deep ideological polarization fueled disputes and mistrust that harmed the functioning of the Voting Section. As detailed in Chapter Four, these disputes arose at various times both among career employees in the Voting Section and between career employees and politically appointed leadership in CRT. On some occasions the incidents involved the harassment and marginalization of employees and managers.

We believe that the high partisan stakes associated with some of the statutes that the Voting Section enforces have contributed to polarization and mistrust within the Section. Among other things, the Voting Section reviews redistricting cases that can change the composition of Congressional delegations and voter ID laws that have actual or perceived impacts on the composition of the eligible electorate. Moreover, the Division's leadership makes choices on Voting Section enforcement priorities – such as whether to

give greater emphasis to provisions intended to increase voter registration or those intended to ensure the integrity of registration lists and prevent voter fraud – that are widely perceived to affect the electoral prospects of the political parties differently. We found that people on different sides of internal disputes about particular cases in the Voting Section have been quick to suspect those on the other side of partisan motivations, heightening the sense of polarization in the Section. The cycles of actions and reactions that we found resulted from this mistrust were, in many instances, incompatible with the proper functioning of a component of the Department.

Polarization within the Voting Section has been exacerbated by another factor. In recent years a debate has arisen about whether voting rights laws that were enacted in response to discrimination against Blacks and other minorities also should be used to challenge allegedly improper voting practices that harm White voters. Views on this question among many employees within the Voting Section were sharply divergent and strongly held. Disputes were ignited when the Division's leadership decided to pursue particular cases or investigations on behalf of White victims, and more recently when Division leadership stated that it would focus on "traditional" civil rights cases on behalf of racial or ethnic minorities who have been the historical victims of discrimination.

The scope of our review did not permit us to trace the source of mistrust and polarization within the Voting Section back to a single event or decision, if that were even possible. One significant event, and the earliest one we address in this report, was the decision by the outgoing Division leadership during the transition period in December 2000 and January 2001 to greatly accelerate the hiring procedure for new attorneys in the Section and elsewhere in the Division. We were told that this surge in hiring took place in the context of a longer-term increase in Division resources made available by Congress. However, as we discuss in Chapter Five, we concluded that the acceleration of this activity during the 2000-2001 period at a minimum created the perception, both among long-time senior career professionals who were involved in the process and among the political appointees in the incoming Division leadership, that it was done in order to hire attorneys perceived to favor the enforcement philosophy of the outgoing administration and to limit the ability of the incoming administration to make its own hiring and resource allocation decisions. We found that these actions generated mistrust between the incoming political leadership in the Division who discovered that the hiring campaign had occurred and the holdover career leadership who participated in the hiring effort.

The polarization and suspicion became particularly acute during the period from 2003 to 2007, including when Bradley Schlozman supervised the Voting Section in his capacity as Principal DAAG and Acting AAG. As detailed in a prior report by the OIG and OPR, Schlozman illegally recruited new

attorneys into the Voting Section and other parts of the Division based on their conservative affiliations. As was evident from the e-mails we cited in our earlier report, Schlozman's low opinion of incumbent career attorneys in the Voting Section was based in significant part on their perceived liberal ideology and was not a well-kept secret. During this review, we found that Schlozman's decision to transfer Deputy Section Chief Berman out of the Voting Section in 2006 was motivated at least in part by ideological considerations.

We also found that some career employees in the Voting Section contributed significantly to the atmosphere of polarization and distrust by harassing other career employees due at least in part to their political ideology or for positions taken on particular cases. As detailed in Chapter Four, some career staff assigned to the Georgia Voter ID Section 5 preclearance matter in 2005 behaved in an unprofessional manner toward one attorney who was perceived to be ideologically close to Division leadership. The behavior included outward hostility, snide and mocking e-mails, and accessing the attorney's electronic documents on the Voting Section shared drive without his permission. In 2007, some career employees made offensive and racially charged comments to and about a student intern who volunteered to assist the trial team in the controversial Noxubee matter, which was the first Section 2 case brought against minority defendants on behalf of White voters. Division leadership reprimanded one career attorney and counseled two others for this conduct. We also found that some Voting Section employees criticized and mocked the trial team in e-mails to each other at work, sometimes using inappropriate and intemperate language.

In 2007, three male attorneys who were widely perceived to be conservatives were counseled for making highly offensive and inappropriate sexual remarks about a female employee, together with remarks that she was "pro-black" in her work. Later that year, during a period of high tension in the Section, at least three career Voting Section employees posted comments on widely read websites concerning Voting Section work and personnel. Some of the postings included a wide array of inappropriate remarks and attacks, as well as highly offensive and potentially threatening statements. The postings included non-public information about attorneys, managers, and internal Department matters. They reflected exceptionally poor judgment and may have constituted a violation of Department regulations or policies. We do not believe that Voting Section or Division managers responded adequately to some of these incidents. We were especially troubled that a non-attorney Voting Section supervisor, who knew of a subordinate's improper conduct, not only suggested that the employee disregard counseling and admonishment from Section leadership, but also encouraged the subordinate to continue the improper conduct.

The functioning of the Voting Section and the relationship between political appointees in the Division's leadership and career employees was

further undermined by unauthorized disclosures of confidential information about internal deliberations and debates in several controversial matters, including the Mississippi and Texas redistricting matters and the Georgia Voter ID matter, which we also discuss in Chapter Four. Managers responded to the threat of further disclosures by limiting career staff access to information and imposing stricter secrecy on more sensitive projects. Despite these efforts, unauthorized disclosures of sensitive and confidential Voting Section information, apparently for political purposes, have continued to the present time. We believe that these disclosures and the responses to them came at a cost to trust, collegiality, and cooperation, and increased the appearance of politicization of the Voting Section's work. While it was beyond the scope of our review to determine the specific source of these unauthorized disclosures, the impact that they had on the relationship between Division leadership and career staff and the operation of the Voting Section was readily apparent to us.

In January 2009, a new President was inaugurated and, soon after, new leadership took office in the Department and the Division. A transition team memorandum that was provided to the incoming Department leadership advised them that, in reviewing the career leadership in the Division, "care should be taken to insure that any changes will protect the integrity and professionalism of the Division's career attorneys and will not be perceived as the politicization pendulum just swinging in a new direction." Despite this admonition, we found that the polarization in the Voting Section continued, as evidenced by several events.

For example, we found that starting in April 2009, there were serious discussions among senior leadership in the Division and the Department about removing Christopher Coates as Chief of the Voting Section, at least in part because of a belief that Coates had a "very conservative view of civil rights law" and wanted to make "reverse-discrimination" cases such a high priority in the Voting Section that it would have a negative impact on the Section's ability to do "traditional" cases on behalf of racial and language-minority voters. However, we found no evidence that Coates had declined to implement the decisions or policies of the new administration at the time of this effort, despite his admittedly conservative views and his acknowledged willingness to pursue "reverse-discrimination" cases. Division leaders also believed, based in part on complaints from career employees, that Coates was a flawed manager and a divisive figure whose removal would improve the functioning and morale of the Voting Section. After career officials in JMD told Division leadership that the then-existing record would not support a performance-based removal, an effort was then undertaken by Division leadership to document Coates's performance deficiencies. Ultimately, however, Coates requested and was granted a transfer out of the Division. We found the manner in which the Coates matter was handled further increased the appearance of politicization of the Voting Section.

We also found that in 2009, then-Section Chief Coates placed a career Section manager on the Honors Program Hiring Committee in order to "balance" the political views of a different committee member who Coates considered to be liberal. Almost immediately thereafter, DAAG Fernandes explored removing the manager from the committee due at least in part to his perceived conservative ideology, although she abandoned this effort. We found that considering the political or ideological leanings of employees in determining the composition of a hiring committee was inappropriate.

The continued polarization within the Voting Section also came into focus during "brown bag" meetings between Section personnel and DAAG Fernandes in 2009. During one meeting about Section 2 enforcement, in September 2009, Fernandes made comments about Division leadership's intention to prioritize "traditional civil rights enforcement" on behalf of racial or ethnic minorities. Some career staff interpreted her comments to signal that Division leadership had a blanket policy of not pursing Section 2 cases against Black defendants or on behalf of White voters. At another meeting later in 2009, Fernandes made comments about Division leadership's intention to focus on enforcing the "voter access" provisions of the NVRA that some career staff interpreted to mean that the administration would take no steps to enforce the "list-maintenance" provisions of the statute, the former of which are perceived to be supported by liberals while the latter are perceived to be favored by conservatives. Fernandes told the OIG that her comments at both meetings were not intended to convey the absolutist positions that some witnesses attributed to them, but rather reflected her understanding of Division leadership's legitimate enforcement priorities. At a minimum, these incidents reveal that the politically charged atmosphere and polarization within the Voting Section continued even after the 2009 change in the Division's leadership.

During the course of our investigation, we received additional allegations about the unfair treatment of perceived liberals by Section or Division management from 2003 to 2008, and additional allegations about the unfair treatment of perceived conservatives by Section or Division management from 2009 to the present. These included allegations that career attorneys received undesirable assignments or unfavorable performance reviews and that Division leadership refused to approve cases that the attorneys proposed because of political or ideological bias. We could not investigate many of these allegations, but we were struck by the perception within the Voting Section that this sort of conduct has continued across administrations. Again, we believe that the perception that some career employees are disfavored by management due to their political views is unusual in the Department, and that it hampers Section operations and undermines the perception of impartial law enforcement.

We did not find sufficient evidence to substantiate allegations about partisanship in hiring. As detailed in Chapter Five, our review did not

substantiate allegations that the Voting Section considered applicants' political or ideological affiliations when hiring experienced trial attorneys in 2010. Nevertheless, we found that the primary criterion used in assessing the qualification of the 482 applicants, namely prior voting litigation experience, resulted in a pool of 24 candidates selected to be interviewed (9 of which were ultimately hired) that had overwhelmingly liberal or Democratic affiliations. Although we found that the composition of the selected candidates was the result of the application of objectively neutral hiring criteria, this result contributed to the perception of continued politicization in the Section. We recommend steps that the Section should take to avoid creating perceptions of ideologically biased hiring.

Our investigation also found no support for allegations that partisan allies of the current administration received preferential treatment in the Voting Section's responses to requests for records, including FOIA requests. As detailed in Chapter Six, we found that differences in the time it took for the Voting Section to respond to records requests were attributable to variance in the time-sensitivity of the requests, the complexity and size of the requests, and the difficulty of locating responsive documents. We found that the Voting Section regularized and strengthened its procedures for responding to records requests in 2003 and since 2006, and that these procedures have helped protect against favoritism in responding to records requests. Nevertheless, we are concerned about the increasing backlog of requests in the Voting Section, which may be contributing to the appearance of politicization in responding to such requests, and we made a recommendation to address the issue.

Although we did not conclude that substantive enforcement decisions in the Voting Section during the period of our review were infected by partisan or racial bias, we believe that the perception remains that enforcement of the voting laws has changed with the election results. Much of this perception is a byproduct of legitimate shifts in enforcement priorities between different administrations. However, some of it has been fed by the incidents of polarization, discord, and harassment within the Voting Section described in this report. It is precisely because of the political sensitivity of the Voting Section's cases that it is essential that Division leaders and Voting Section managers be particularly vigilant to ensure that enforcement decisions – and the processes used to arrive at them – are, and appear to be, based solely on the merits and free from improper partisan or racial considerations.

In the highly controversial NBPP matter, we found that the decisions that were reached by both administrations were ultimately supportable on non-racial and non-partisan grounds. However, we also found that the manner in which the outgoing administration filed the case without following usual practice and the new administration's dismissal of Jackson as a defendant at the eleventh hour, particularly viewing the latter in the context of the contemporaneous discussions about removing Coates as Section Chief, both

risked undermining confidence in the non-ideological enforcement of the voting rights laws.

We do not believe that ideological polarization and bitter controversy within the Section are an inevitable consequence of the high political stakes in some Voting Section cases. Other Department components – including components that specialize in subject areas that are also politically controversial, such as environmental protection – do not appear to suffer from the same degree of polarization and internecine conflict. We believe the difference is largely a function of leadership and culture, and that steps must be taken to address the professional culture of the Voting Section and the perception that political or ideological considerations have affected important administrative and enforcement decisions there.

Given the troubling history of polarization in the Voting Section, Division leadership needs to promote impartiality, continuity, and professionalism as critical values in the Voting Section, and leadership and career staff alike must embrace a culture where ideological diversity is viewed as beneficial and dissenting viewpoints in internal deliberations are welcomed and respected. We also believe that leadership and career staff must be continually mindful of the need to ensure the public's confidence in the Voting Section's impartiality. We were surprised and dismayed at the amount of blatantly partisan political commentary that we found in e-mails sent by some Voting Section employees on Department computers. We recognize that Voting Section employees, no less than other Department employees, are entitled to their individual political views. However, the importance of separating such views from Section work is paramount. Government e-mails are readily forwarded and reproduced, and political commentary that is intended to be private may quickly become public, which could further exacerbate the appearance of politicization in the Section and undermine the public's confidence in the Department.

The Department's leadership also should avoid the use of direct communications with staff attorneys with the explicit or implicit understanding that intermediate supervisors who are not trusted by management will not be included in or informed about the communications. We saw this practice during the prior administration in the Georgia Voter ID case in 2005 and during the current administration in the exclusion of Section Chief Coates from some voting-related projects in 2009. We believe that communications of this type between Division or Department leadership and career personnel that intentionally exclude the career employees' supervisors are indicative of a dysfunctional management chain and can only feed mistrust and polarization.

Employees in the Voting Section have a critical role to play in improving the Section's culture. Employees must appreciate the importance of public confidence in the impartial enforcement of the voting rights laws. They must also be prepared to implement legitimate enforcement priorities set by Division

management even if the employees disagree with them. The pattern of undermining Division management and other career employees through personal attacks in blog posts and the unauthorized disclosure of confidential and privileged information must stop. Department employees have several options for addressing instances of actual or perceived misconduct or mismanagement, including reporting them to the OIG and OPR.

Many of the career and political employees who were involved in the most troubling incidents described in this report have left the Department and are no longer subject to administrative discipline. However, several of the incidents involved conduct by current Department employees and we are referring those matters to the Department for a determination of whether discipline or other administration action with respect to each of them is appropriate.

The conduct that we discovered and document in this report reflects a disappointing lack of professionalism by some Department employees over an extended period of time, during two administrations, and across various facets of the Voting Section's operations. In the Department, professionalism means more than technical expertise – it means operating in a manner that consciously ensures both the appearance and the reality of even-handed, fair and mature decision-making, carried out without regard to partisan or other improper considerations. Moving forward, the Department's leadership should take steps consistent with the findings and recommendations contained in this report to ensure that the actions and decisions of the Section and its employees meet the standards of professionalism and impartiality that are rightly expected and demanded by the public of the Department of Justice.

APPENDIX A

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MEMORANDUM

TO: Michael E. Horowitz
Inspector General

FROM: Thomas E. Perez
Assistant Attorney General
Civil Rights Division

DATE: March 11, 2013

RE: Response to the Office of the Inspector General's report entitled *Review of the Operations of the Voting Section of the Civil Rights Division.*

Thank you for the opportunity to provide this response to the report by the Office of the Inspector General entitled *Review of the Operations of the Voting Section of the Civil Rights Division.*

The report examines the Voting Section's enforcement of the federal voting rights laws over time. We agree with your conclusion that since 2009, "the decisions that Division or Section leadership made in controversial cases did not substantiate claims of political or racial bias." Report at 114.

The report also examines the hiring process for selecting experienced trial attorneys in the Voting Section in 2010. You reviewed "thousands of internal CRT documents, including e-mails, hand-written notes, and interviews of CRT staff," and concluded that this review "did not reveal that CRT staff allowed political or ideological bias to influence their hiring decisions." Report at 214. We agree with this conclusion, and with your findings that "the backgrounds of the Voting Section's new attorneys revealed a high degree of academic and professional achievement," Report at 204; that "the new hires as a group had significantly more litigation experience than the candidates who were not hired," Report at 211; and that "prior voting litigation experience was a reasonable criterion to use" in selecting experienced trial attorneys. Report at 222.

In addition, the report examines the Division's and the Voting Section's process for responding to Freedom of Information Act requests and other public requests for records. We agree with your conclusions that since 2009, there is "no evidence supporting the allegation that

differences in response times were the result of partisan or ideological favoritism," and that your review "did not find any substantiation of ideological favoritism or political interference in such responses." Report at 249.

Finally, the report examines complaints of staff mistreatment based on actual or perceived political ideology, directed at both conservative and liberal employees. The complaints you examined were concentrated in the period from 2004 to 2007, but included two instances in 2009. We agree that mistreatment of Division employees based on their political ideology is never appropriate, and in the past several years we have implemented a number of measures to ensure that the Division and the Voting Section continue to maintain a professional and collegial work environment. Notwithstanding our agreement that you have identified several instances of unacceptable conduct, we do have concerns about other aspects of your examination of these issues, which we describe further below.

In the remainder of this letter, we address some of the conclusions in your report with which we concur, while noting some aspects of the report with which we do not agree.

The Division's Enforcement of Voting Rights Laws

Chapter Three of the report examines trends in the Voting Section's enforcement activity over time. We agree with the conclusion in this chapter that substantive enforcement decisions since 2009 were not motivated by improper partisan or racial factors and did not improperly favor or disfavor any particular group of voters. Report at 114. Regarding the *New Black Panther Party* litigation, we agree with the conclusion you have reached – as the OPR also found in its 2011 report – that the decisions to dismiss three of the defendants and limit the injunctive relief sought against the fourth were not the result of improper racial or political considerations. Report at 114. We agree as well with the finding of both the OIG and the OPR that political leadership did not direct the outcome of the case. Report at 71.

Because your investigation did not include a review of our enforcement activities since the end of 2011, your report does not fully capture one of the most significant trends in the Voting Section's enforcement activity over time – namely, that the Voting Section's workload and productivity in the past two years increased to what we believe are among the highest levels ever. The Voting Section began participation in 43 new cases in fiscal year 2012 – the largest number of new litigation matters in any fiscal year ever, to the best of our knowledge. This number of new matters exceeded the prior year's activity level by a significant margin, and that year was itself a record fiscal year, with 27 new cases. During this time period, we expended considerable resources litigating declaratory judgment actions under Section 5 of the Voting Rights Act that blocked discriminatory voting changes from taking effect (including four cases that went to trial in the D.C. District Court in 2012); defending the constitutionality of Section 5; and aggressively enforcing the statute that protects the rights of servicemembers and overseas citizens to participate in our democracy.[1] The Voting Section also dramatically expanded its

[1] In 2012 alone, the Voting Section participated in the following cases that resulted in published judicial decisions, not including consent decrees, amicus participation, or appellate cases: *South Carolina v. United States*, No. 12-cv-203, 2012 WL 4814094 (D.D.C. Oct. 10, 2012) (three-judge court) (Section 5 preclearance for South Carolina voter ID law granted in part and denied in part); *Texas v. Holder*, No. 12-cv-128, 2012 WL 3743676 (D.D.C. Aug. 30, 2012) (three-judge court) (denying preclearance for photo identification requirement for in-person voting); *Texas v.*

amicus practice, filing more amicus briefs in the last fiscal year than in the previous nine years combined.

The Voting Section's Process for Hiring Experienced Trial Attorneys

Chapter Five of the report examines the Voting Section's hiring of experienced trial attorneys in 2010. We agree with the report's conclusions in this chapter that the Voting Section's selection process for these attorneys was based on legitimate criteria, "particularly in light of the Voting Section's stated need for experienced attorneys who would be ready to 'hit the ground running' by leading complex voting rights cases immediately." Report at 216. The report also confirms that politics and ideology were not considered in making hiring decisions, *see* Report at 203, 214, 216, 255-56; that the successful candidates had "a high degree of academic and professional achievement," Report at 204; and that the successful candidates had significantly more voting litigation experience than the candidates who were not hired. Report at 215 ("78 percent of the new hires (7 of 9) had 2 or more years of voting litigation experience compared to only 3 percent (15 of 473) of all rejected applicants.").

The Division took seriously the findings of the 2008 OIG/OPR report on politicized hiring and other personnel practices in the Division.[2] One of my first priorities after being confirmed as Assistant Attorney General in October 2009 was to adopt significant reforms to the Division's hiring process to implement the recommendations in the 2008 OIG/OPR report. The Division also put in place significant additional safeguards beyond those recommended by the 2008 OIG/OPR report, as you note. Report at 193 n.176. Our goals in implementing these significant reforms were to restore merit-based, career-driven hiring, and to ensure that the hiring practices from 2003 to 2006, which the 2008 OIG/OPR report found to be illegal, are not repeated.

The OIG's conclusions in this report demonstrate that the safeguards the Division created were effective in ensuring that political and ideological affiliations were not considered during the career hiring process. In its investigation, the OIG reviewed "thousands of internal CRT documents, including e-mails, hand-written notes, and interviews of CRT staff who participated

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United States, No. 11-cv-1303, 2012 WL 3671924 (D.D.C. Aug. 28, 2012) (three-judge court) (denying preclearance for statewide redistricting plans); *Florida v. United States*, 885 F. Supp. 2d 299 (D.D.C. 2012) (three-judge court) (denying preclearance for early voting changes, and granting preclearance for change-of-address procedures); *Chisom v. Jindal*, No. 86-cv-4075, 2012 WL 3891594 (E.D. La. Sept. 1, 2012) (holding that an earlier consent decree entered into by the United States, private plaintiffs, and the State of Louisiana to resolve a Section 2 lawsuit determined the process for who would become the next chief justice of the state supreme court); *United States v. Alabama*, 857 F. Supp. 2d 1236 (M.D. Ala. 2012) (granting motion for preliminary injunction in UOCAVA lawsuit); *United States v. Alabama*, No. 12-cv-179, 2012 WL 642312 (M.D. Ala. Feb. 28, 2012) (order); *United States v. Georgia*, No. 12-cv-2230, 2012 WL 4336257 (N.D. Ga. July 05, 2012) (granting preliminary injunction in UOCAVA lawsuit); *United States v. New York*, No. 10-cv-1214, 2012 WL 254263 (N.D.N.Y. Jan. 27, 2012) (granting motion for permanent and supplemental relief in UOCAVA lawsuit); *United States v. Florida*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012) (finding that Florida's list maintenance program likely violated Section 8 of the NVRA, but denying temporary restraining order on the ground that Florida had voluntarily suspended that program).

[2] *See* Report of the Office of the Inspector General and the Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2008), *at* www.justice.gov/opr/oig-opr-iaph-crd.pdf.

in the selection of the Voting Section's experienced attorneys," and this review "did not reveal that CRT staff allowed political or ideological bias to influence their hiring decisions." Report at 214. Instead, merit-based considerations such as voting litigation experience governed the 2010 hiring decisions that the OIG examined. Report at 215 ("Our interviews with hiring committee members, review of contemporaneous notes taken during the hiring committee's deliberations, and assessment of its recommendations showed that litigation experience involving voting rights and the statutes that the Voting Section enforces were highly important to the hiring committee's review of applications."). Indeed, the hiring committee's emphasis on voting litigation experience has proven to be tremendously valuable in light of the heavy litigation demands the Voting Section confronted in 2011 and 2012, which were among the Section's busiest years ever in terms of trial practice.

Although the report concludes both that the hiring process complied with federal laws and Department policies, and that the selection criteria were appropriate, the OIG includes several recommendations to mitigate any residual risks of violating merit system principles in the future and to avoid any perception of prohibited personnel practices. These recommendations include that the Division and the Voting Section "refrain from relying on the 'general civil rights / public interest' criterion in the future'"; "not place primary emphasis on 'demonstrated interest in the enforcement of civil rights laws' as a hiring criterion"; and better account for the "significant contributions that applicants with limited or no civil rights backgrounds can make to the Section." Report at 222. We appreciate the OIG's focus on further prophylactic steps the Division may be able to take to continue refining its hiring practices. We also agree that attorneys with a wide range of substantive backgrounds can make – and have made – important contributions to the work of the Division and the Voting Section. Attorneys from a diverse array of legal backgrounds were in fact hired across the Division in 2010.

We believe, however, that it is both usual and appropriate for a litigating component within the Department to value experience in the subject matter of that component when making hiring decisions. Recent vacancy announcements in other components, for instance, include a trial attorney position in the Indian Resources Section of the Environment and Natural Resources Division stating that "[e]xperience in litigation, in particular water rights litigation, and knowledge of Indian, administrative, and water law is highly desirable"; and a trial attorney position in the Asset Forfeiture and Money Laundering Section (AFMLS) of the Criminal Division listing "experience with financial investigations and tracing money" as a preferred qualification. Just as it is understandable for the Indian Resources Section to value a background in Indian law, and for AFMLS to value a background in tracing money, we believe that it is appropriate in selecting attorneys for litigating positions in the Civil Rights Division to consider whether applicants have experience with and a demonstrated interest in civil rights litigation.[3]

We have a number of concerns about the report's description of the hiring decisions made in January 2001. The report does not fully describe the totality of the circumstances surrounding a two-year effort to secure additional resources for the Civil Rights Division. In addition, although we agree with the finding that there is "no basis to conclude that [the 2000-2001 hiring]

[3] Specifically minimizing civil rights experience was one practice used in the 2003-2006 period as a proxy for making ideological hiring decisions. *See* 2008 OIG/OPR Report 17 (noting that Bradley Schlozman minimized the importance of prior civil rights experience).

effort violated any law or Department policy," Report at 213, we believe that describing the 2000-2001 hiring as a "significant historical backdrop" to subsequent personnel practices, Report at 181, may give the misimpression that this hiring helps to explain or minimize the severity of the subsequent illegal conduct in hiring and other personnel practices from 2003 to 2006. In the more comprehensive joint review by the OIG and the OPR that examined these personnel practices from 2003 to 2006, and which was based in part on interviews of several former Assistant Attorneys General, the 2000-2001 hiring is not described as a backdrop to the subsequent illegal conduct you identified.

The Voting Section's Process for Responding to Records Requests

Chapter Six of the report examines allegations that the Voting Section's responses to public records requests displayed favoritism based on the ideology of the requester. The OIG conducted an exhaustive review of evidence, including reviewing "tens of thousands of e-mails relating to FOIA responses in the Voting Section between 2001 and 2010," and "did not find any substantiation of ideological favoritism or political interference in such responses." Report at 249. You also concluded after reviewing the response times for records requests that there was "no evidence supporting the allegation that differences in response times were the result of partisan or ideological favoritism." Report at 249. The report also found that the Voting Section instituted additional procedures beginning in 2006, and "that these procedures have helped to protect against bias in responding to records requests." Report at 249. We agree with the report's conclusion that the Voting Section did not give preferential treatment to requesters based on political or ideological affiliation.

The report notes a concern regarding the Voting Section's current backlog of pending records requests. We have accepted the OIG's recommendation to assign additional staff to help process the increased demand for Voting Section records. In response to this report, two managers in the Voting Section will devote additional time to handling the backlog of records requests. In addition, the Division recently authorized the Voting Section to hire an additional full-time contractor to assist in reducing the large backlog of records requests. We will also provide training to additional paralegal contractors who are already on staff so that they can devote time to records requests as well. We currently anticipate that these additional staffing assignments will be short-term (three- to six-month) assignments, although we are prepared to retain this level of resources longer than that if necessary to continue addressing the backlog.

Treatment of Voting Section Staff and Managers

Chapter Four of the report examines complaints regarding mistreatment of Voting Section employees because of their political ideology, including incidents involving both perceived conservatives and perceived liberals. These complaints are concentrated in the period from 2004 to 2007, but include two examples that occurred in 2009. The Department takes very seriously any allegations of harassment, mistreatment, unauthorized disclosure of internal information, and other unprofessional conduct. The OIG has documented in this chapter a number of troubling incidents that have no place in the Department, and we have taken steps to prevent similar incidents from recurring.

As the report notes, the Civil Rights Division took steps to address a number of these specific incidents of improper conduct at the time they arose in the period between 2004 and 2007. The report also notes many of the broader measures the Division implemented to train all staff on their anti-discrimination and anti-harassment obligations, including "providing annual [equal employment opportunity (EEO)] and anti-harassment training to all employees and managers; issuing EEO, prohibited personnel practice and anti-harassment policies that are available to all employees on the CRT Intranet and that set forth the various procedures for reporting misconduct; and sending periodic reminders to all employees about their obligations to conduct themselves in a professional manner at all times." Report at 133.

The Division has continued to remind employees of these obligations. For example, as your report notes, in January 2011, I "reiterated to all CRT employees – via posting on the CRT Intranet page and via e-mail message to all CRT employees – the prohibitions against discrimination and harassment in the workplace, including specific language that '[a]ll employees must conduct themselves in a professional manner at all times and refrain from engaging in conduct that may be viewed as hostile or offensive to others in the workplace, including making derogatory comments about other employees because of their membership in a protected category, such as race, sex or religion, or because of their actual or perceived political affiliation.'" Report at 133-34. The Division has also investigated, in consultation with the Justice Management Division (JMD), the recent unauthorized disclosures of internal Voting Section information and documents, and issued a Division-wide email in December 2012 to reiterate to staff that they must maintain the confidentiality of internal documents and information.

In addition to these efforts, Division leadership since 2009 has sought to promote effective and respectful decision-making by ensuring that career attorneys and professionals have every opportunity to provide their considered views and advice. For example, as you note, the "change to the Section 5 recommendation procedure was controversial within the Voting Section" when it was implemented in 2005. Report at 86 n.70; *see also* Report at 153 n.135. This change was controversial because senior leadership dramatically re-engineered the longstanding process by which decisions in Section 5 matters were made to deny career staff a full opportunity to express their position, and to obscure the appearance of staff dissent. I agree with you that "it is essential that Division leaders and Voting Section managers be particularly vigilant to ensure that enforcement decisions – and the processes used to arrive at them – are, and appear to be, based solely on the merits and free from improper partisan or racial considerations." Report at 256. That is why, in 2009, the Division restored the prior practice of allowing each staff member who works on a Section 5 submission to state his or her views in writing so that those views can be considered in the decision-making process, and I reiterated the importance of this process in a 2011 memorandum to Voting Section staff. Report at 86 n.70.

We believe these and other efforts have improved the atmosphere and professional culture within the Voting Section considerably over the past several years. The Voting Section is a far different place in 2013 than it was in 2005 or 2007. Nonetheless, we acknowledge, as your report notes, that voting rights enforcement is a particularly important area in which to assure professionalism and impartiality, and we recognize the need to continue taking additional steps to maintain and strengthen the culture of the Voting Section and to foster a work environment that is as collegial and healthy as possible. In response to this report, we will reiterate to all

Division staff their professionalism obligations, including the prohibition on harassment based on perceived political ideology. We also have begun the process of developing a written policy to further address the continuing challenge of unauthorized disclosures of internal and enforcement-related information. Continuing the work of strengthening a collegial, professional work environment in the Voting Section is one of our highest priorities, and we expect these steps to assist us in this effort.

This chapter examines the staffing of the Honors Program Hiring Committee in 2009, and finds that "this incident demonstrates that problems of polarization within the Voting Section continued after the change in administrations." Report at 148. As described in the report, former Voting Section Chief Chris Coates decided in September 2009 to assign a manager to a hiring committee because Coates perceived that manager to be conservative. Report at 144-45. You concluded that Coates's decision to do so was inappropriate. Report at 148. Then-Deputy Assistant Attorney General Julie Fernandes received a complaint about Coates's staffing decision; investigated her options for addressing that complaint; and concluded that she should take no action because she became satisfied that the manager could perform the duties on the hiring committee effectively and properly. Report at 145-47. To the extent this incident demonstrates that ideological polarization continued into 2009, we believe it does so only through Coates's improper staffing decision. Fernandes's response – to investigate the complaint she received, and to make no further staffing changes after concluding the manager would serve effectively on the committee – was itself perfectly appropriate.

The report also examines discussions among Division and Department leadership in early 2009 to address serious concerns regarding Coates's performance. These concerns are documented throughout your report, which notes, "Division leadership held genuine beliefs about Coates's weaknesses as a manager, and . . . Coates was not without fault in his management of the Section and his relationships with Division leadership." Report at 177. Incoming Division leadership heard consistent complaints in early 2009 from career staff in the Voting Section about Coates's management deficiencies. Report at 159-60, 174, 178. By his own account, Coates was not a good manager. Report at 174-75. Among the concerns for Division leaders at the time was the recurrent problem, which your report documents, that Coates "took insufficient steps to ensure that relevant and accurate information was provided to Division leadership in connection with seeking their approval of court submissions." Report at 177; *see also* Report at 56, 58, 61 n.45, 159-60.

It was these and other management and performance problems that prompted the Department's examination of its personnel options. In light of these documented concerns, Division and Department leadership engaged in appropriate conversations in the spring of 2009 regarding their options for addressing these serious management and performance problems; consulted with JMD and followed JMD's guidance to document any performance shortcomings before taking action; and then ultimately chose not to take any action to remove or reassign Coates involuntarily. Moreover, we do not agree that Department policy projects were improperly staffed, or with the suggestion that this staffing was part of an effort to remove Coates from his position.

Conclusion

Without question, the Voting Section in January 2009 had low morale and an unacceptable degree of staff conflict, which we believe were largely a product of the illegal hiring, transfers, case assignments, and other personnel practices that occurred in the Division from 2003 to 2006 and that are documented in the 2008 OIG/OPR report, as well as the management deficiencies that existed at the time. Since 2009, the Civil Rights Division and the Voting Section have undertaken a number of steps to improve the professionalism of our workplace and to ensure that we enforce the civil rights laws in an independent, evenhanded fashion. For example, as noted above, the Voting Section restored its review process under Section 5 of the Voting Rights Act to allow each staff member working on a submission the opportunity to state his or her view, a practice that had been followed for decades until it was changed in 2005. In late 2009 and early 2010, the Division finalized and implemented its reformed hiring procedures to restore merit-based and career-driven hiring across the board, including in the Voting Section.

The selection in 2010 of Section Chief Chris Herren, a career Voting Section attorney who joined the Section in 1992, was a critical step in the Voting Section's development. Herren has a deep knowledge of and experience in enforcement of the federal voting rights laws, and enjoys the respect of Section employees, election administrators around the country, and other key external stakeholders. He has assembled a strong management team of experienced voting rights attorneys. Under his leadership, in 2011, the Voting Section implemented a number of structural reforms to better manage its litigation efforts, including the creation of subject-matter teams to allow for effective strategic planning as well as opportunities for professional development for all staff. Your review has identified additional measures that may allow us to accomplish our mission even more effectively in the future, and we will of course consider those recommendations. We recognize that although significant progress has been made, additional work remains.

We are pleased that the conclusions following your review are that the Voting Section has not, since 2009, considered improper or partisan factors in its enforcement, hiring, public records request response times, and other functions. We look forward now to turning our full attention to the critically important work of enforcing our nation's voting rights laws.

Thank you for the opportunity to provide this response.

APPENDIX B

Attorney Outreach List
Status of Updates as of February 5, 2010

List of Current Organizations

ADAPT
Alexander Graham Bell Association for the Deaf and Hard of Hearing
American Arab Anti-Discrimination Committee
American Association of People with Disabilities
American Bar Association – Commission on Mental and Physical Disabilities Law
American Bar Association – Commission on Racial and Ethnic Diversity in the Profession
American Civil Liberties Union
American Council of the Blind
American Diabetes Association
American Foundation for the Blind
American Speech-Language-Hearing Association
American Translators Association
American University – Washington College of Law
Anti-Defamation League
Arab American Bar Association of Illinois
Asian American Bar Association of Houston
Asian American Bar Association of New York
Asian American Justice Center
Asian American Lawyers Association of Massachusetts
Asian Bar Association of Washington
Asian Pacific American Bar Association of Pennsylvania
Asian Pacific American Bar Association of the Greater Washington, D.C. Area
Asian Pacific American Legal Resource Center
Asian Pacific Bar Association of the Silicon Valley
Association of American Law Schools – Indian Nationals & Indigenous People
Association of American Law Schools – Minority Section
Autistic Self Advocacy Network
Bar Association of the District of Columbia
Barristers' Association of Philadelphia, Inc.
Bazelon Center for Mental Health Law
Bill of Rights Defense Committee
Black Women Lawyers of Greater Chicago, Inc.
Boston University
Brain Injury Association of America
Brigham Young University Law School
Burton Blatt Institute
Cambodian-American Asian American Civic Organizations
Catholic University, Columbus School of Law
Columbia University
Constance List, Listserv (discussion group of African American Attorney)

Council of Shia Professionals
Council of State Administrators of Vocational Rehabilitation
Deaf and Hard of Hearing in Government
Department of Defense Operation Warfighter
Department of Justice Association of Black Attorneys
Department of Justice Association of Hispanic Employees for Advancement and Development
Department of Justice AG's Committee on the Employment of Persons with Disabilities
Department of Justice Equal Employment Opportunity Staff (Disability Program Manager)
Department of Labor Office of Disability Employment Policy, Workforce Recruitment Program
Department of Labor Federal Disability Workforce Consortium
Department on Disability Services, D.C. Government
Department of Rehabilitation Services, Virginia
Disability Rights Education and Defense Fund
Equal Employment Opportunity Commission
Fairfax Bar Association
Federal Bar Association
Federal Bar Association, Indian Law Section
Federal Emergency Management Agency
Florida Legal Services
Florida State University College of Law
Fordham University
Fulton County, GA Office of the Child Attorney
Gate City Bar Association
Gay, Lesbian, Bisexual and Transgender Attorneys of Washington, D.C.
George Mason University Law School
George Washington University School of Law Development Office
Georgetown University Law Center
Georgia Asian Pacific American Bar Association
Georgia Association of Black Women Attorneys
Hispanic Bar Association of Orange County
Hispanic National Bar Association
Howard University Law School
Immigration Project of the Wisconsin Coalition Against Domestic Violence
Jack & Jill of Greater St. Louis
Korean American Bar Association of Northern California
Language Access Consultants
Lawyers Committee for Civil Rights Under the Law
Lewis and Clark Law School
Loyola Law School, Los Angeles
Maryland Division of Rehabilitation Services
Mental Health America
Mexican American Bar Association of Los Angeles County
Minnesota Hispanic Bar Association
Multi-cultural Committee Service
Muslim Bar Association of Southern California (MBASC)

National Alliance for the Mentally Ill
National Asian Pacific American Bar Association
National Association of the Deaf
National Association of Judiciary Interpreters & Translators
National Bar Association (national African American bar association)
National Coalition for Disability Rights (NCDR)
National Coalition of Mental Consumer/Survivor Organizations
National Coalition on Health Care
National Conference of Women's Bar Associations
National Council on Disability
National Council on Independent Living
National Disability Rights Network
National Federation of the Blind
National Hispanic Prosecutors Association
National Immigration Law Center
National Indian Justice Center
National Organization on Disability
National Policy and Advisory Council on Homelessness
National Spinal Cord Injury Association
Native American Bar Association of Washington, D.C.
New York School of Law
New York State Association of Criminal Defense Lawyers
North American South Asian Bar Association
~~Office of Child Attorney, Fulton County, Georgia~~
Pakistan American Public Affairs Committee (PAKPAC)
Paralyzed Veterans of America
Pan Asian Lawyers Association of San Diego
Pennsylvania Association of Criminal Defense Lawyers
Project EARN
Public Interest Law Center of Philadelphia
Self Advocates Becoming Empowered
Sikh Coalition
Skadden Arps Fellowship
South Asian Bar Association of Washington, D.C.
South Asian Bar Association of Northern California
Southwestern Law School
Stanford Law School
Texas Southern University, Thurgood Marshall School of Law
The ARC of the United States
The ARC and United Cerebral Palsy Public Policy Collaboration
The Becket Fund for Religious Liberty
U.S. Attorney's Bulletin
United Cerebral Palsy
United Spinal Association
University of California – Berkeley School of Law

University of California – Davis
University of California – Hastings College of Law
University of California – UCLA School of Law
University of Chicago Law School
University of Connecticut School of Law
University of Dayton School of Law
University of the District of Columbia – David A. Clarke School of Law
University of Idaho College of Law
University of Illinois College of Law
University of Maryland School of Law
University of Miami School of Law
University of Michigan - Ann Arbor
University of Missouri School of Law
University of Pennsylvania Law School
University of Tulsa College of Law
Vietnamese American Association of the Greater Washington, D.C. Area
Villanova University
Virginia State Bar Association
Washington & Lee School of Law
Washington Lawyers' Committee for Civil Rights and Urban Affairs
William and Mary School of Law
Wolverine Bar Association
Women's Bar Association of D.C.

E-Mails Bounced Back

Alexandria Bar Association
American Bar Association – Commission on Women in the Profession
American Corporate Counsel Association
Assistant United States Attorneys Association
Association of Black Lawyers of Westchester County, New York
California Association of Black Lawyers
Colorado Hispanic Bar Association
Connecticut Hispanic Bar Association
Cornell University
Dallas Asian-American Bar Association
Federal Bar Association – Federal Litigation Section
Filipino Bar Association of Northern California
Hispanic Bar Association of D.C.
Houston Lawyers Association
J. L. Turner Legal Association
Korean American Bar Association of Washington State
Metropolitan Black Bar Association
National Association of Protection and Advocacy Systems
National Association of Deaf Law Center
National Association of Women Lawyers

National Lesbian and Gay Law Association
Native American Bar Association
Oklahoma Indian Bar Association
Organization of Chinese Americans
Philippine American Bar Association
Prince George's County, Maryland Bar Association
San Francisco Law Raza Lawyers Association
South Asian Bar Association of New York
The California Minority Counsel Program
U.S. Department of the Air Force – Judge Advocate General's Department
University of Baltimore School of Law
University of Nevada Las Vegas –William S. Boyd School of Law
University of Richmond – T.C. Williams School of Law
University of Wisconsin – Madison
Utah Minority Bar Association

No Response From E-Mail

Alliance of Black Women Attorneys
American Bar Association – Government and Public Sector Lawyers Division
American Bar Association – Section of Litigation
American Bar Association – Section of Litigation, Minority Trial Lawyers Committee
American Bar Association – Young Lawyers Section
American Judges Association
Anne Arundel Bar Association
Asian American Bar Association of the Greater Chicago Area (AABA)
Asian American Bar Association of the Greater Bay Area
Asian Pacific American Legal Center of Southern California
Asian Pacific American Bar Association of Colorado
Asian Pacific American Bar Association of Los Angeles County
Asian Pacific American Lawyers Association of New Jersey
Association of American Law Schools – Litigation Section
Association of Black Women Attorneys
Association of Black Women Lawyers of New Jersey
Baltimore County Bar Association
Bar Association of Baltimore City
Bar Association of the District of Columbia – Young Lawyers Section
Black Lawyer's Association of Cincinnati
Black Women's Bar Association of Suburban Maryland, inc.
Black Women Lawyers Association of Los Angeles
Blind Veterans Association
Chicago Committee on Minorities in Large Law Firms
Connecticut Asian Pacific American Bar Association
Cook County Bar Association
Cuban American Bar Association
Dallas Hispanic Bar Association

D.C. Bar Association
Department of Justice Pam Asian Employees Association
Dominican Bar Association
D.W. Perkins Bar Association, Inc.
Fairfax, Virginia Bar Association – Young Lawyers Section
Federal Bar Association – Federal Career Service Division
Federal Bar Association – D.C. Chapter
Federal Bar Association – Capitol Hill Chapter
Federal Bar Association – Pentagon Chapter
Federal Bar Association – Maryland Chapter
Federal Bar Association – Northern Virginia Chapter
Federal Research Services, Inc.
Florida A&M University College of Law
Filipino American Lawyers of San Diego
Greater Washington Area Chapter, Women Lawyers Division of the National Bar Association
Harvard University
Hispanic Bar Association
Hispanic Bar Association of the Commonwealth of Virginia, Inc.
Hispanic Bar Association of Michigan
Hispanic Bar Association of Pennsylvania
Hispanic Employment Program Managers
Hispanic Lawyers Association of Illinois
Indian American Bar Association – Chicago
Indian Law Resource Center - Washington, D.C. Office
Inter-American Bar Association
Japanese American Bar Association of Los Angeles
John M. Langston Bar Association of Los Angeles
Korean American Bar of Southern California
Lawyers for One America
Los Abogados Hispanic Bar Association of Maricopa County
Local Government Attorneys of Virginia
Loren Miller Bar Association
Maryland Hispanic Bar Association
Maryland State Bar Association
Maryland State Bar Association – Young Lawyers Section
Maryland State's Attorneys' Association
Maryland Trial Lawyers Association
Massachusetts Association of Hispanic Attorneys
Massachusetts Black Lawyers Association
Minnesota American Indian Bar Association
Minnesota Association of Black Lawyers
Minority Corporate Counsel Association
Montgomery County, Maryland Bar Association
Monumental City Bar Association
National American Indian Court Judges Association
National Asian Pacific American Legal Consortium

National Association for Public Interest Law
National Association of Assistant United States Attorneys
National Association of Black Women Attorneys
National Association of Blind Lawyers
National Black Prosecutors Association
National Congress of American Indians
National Legal Aid & Defender Association
National South Asian Bar Association
Nativeamericanlaw, Listserv
North Carolina Central University School of Law
Northwestern University
Northwest Indian Bar Association
Orange County Japanese American Lawyers' Association
Old Dominion Bar Association
Puerto Rican Bar Association of Illinois
Puerto Rican Bar Association, Inc.
Regent University School of Law
Sam Cary Bar Association
South Asian Bar Association of Southern California
Southern California Chinese Lawyers Association
St. Mary's University School of Law
University of Arizona, James E. Rogers College of Law
University of Florida Frederic G. Levin College of Law
University of North Carolina at Chapel Hill
University of Southern California
University of Texas at Austin School of Law
University of Virginia School of Law
Virgil Hawkins Florida Chapter National Bar Association
Virginia Bar Association
Virginia Commonwealth's Attorneys Services Council
Virginia Trial Lawyers Association
Washington Bar Association
Washington Council of Lawyers
West Virginia Bar Association
West Virginia Prosecuting Attorneys Institute
West Virginia Trial Lawyers Association
West Virginia University College of Law
Women's Bar Association of Maryland, Inc.

APPENDIX C

Applicant Organizations

Liberal Organizations

American Civil Liberties Union
Amnesty International
Advancement Project
Alliance for Justice
American Constitutional Society
Appleseed Foundation
Asian American Justice Center
Asian American Legal Defense and Education Fund
Ayuda
Baltimore Public Justice Center
Brennan Center for Justice
Carter Center
Center for Constitutional Rights
Center for Death Penalty Litigation
Center for Reproductive Rights
Clean Water Action
Common Cause
Community Legal Services Immigration Clinic
Death Penalty Clinic
Demos
EarthRights International
Equal Justice Society
Equality Florida
Equality Michigan
Environmental Defense Fund
Environmental Law Center
Fair Elections Legal Network
Florida Immigrant Advocacy Center
Gay and Lesbian Victory Fund
Gaylaw
Greenpeace
Human Rights Campaign
Human Rights First
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Rights Coalition
Innocence Project
Irish Center for Human Rights
Irish Refugee Services
Lambda Legal Defense and Education Fund
Law School Civil and Human Rights Clinics and Organizations (various)
Law Students for Choice

Lawyers' Committee for Better Housing
Lawyers' Committee for Civil Rights
Legal Aid Organizations (various)
Legal Momentum [formerly National Organization for Women Legal Defense and Education Fund]
Mexican American Legal Defense and Education Fund
Migrant Legal Action Program
National Association for the Advancement of Colored People (NAACP)
NAACP Legal Defense Fund
National Abortion Rights Action League (NARAL)
National Association for Public Interest Lawyers
National Council of La Raza
National Immigration Justice Center
National Law Center on Homelessness and Poverty
National Wildlife Federation
National Women's Law Center
New Mexico Lesbian and Gay Lawyers Association
New York Civil Liberties Union
Oliver W. Hill Foundation
Open Society Institute
People for the American Way
Poverty & Race Research Action Council
Prisoner Legal Services
Prisoners and Families Clinic
Project Vote
Puerto Rican Legal Defense and Education Fund
Southern Center for Human Rights
Southern Coalition for Social Justice
Southern Environmental Law Center
Southern Poverty Law Center
Texas Civil Rights Project
Working People's Law Center
World Organization Against Torture
World Organization for Human Rights

Conservative Organizations

Alliance Defending Freedom
American Enterprise Institute
Americans United for Life
Campus Crusade for Christ
Christian Legal Aid
Christian Legal Society
Federalist Society
Federation for American Immigration Reform
Pacific Justice Institute
Republican National Lawyers Association
Young Christian Society

APPENDIX D

Applicants with Voting Litigation Experience – Affiliations and Source of Litigation Experience

Applicant Name	Affiliations	Source of Voting Litigation Experience
Applicant 1*	Advancement Project, Lawyers' Committee for Civil Rights (LCCR), worked for Democratic member of Congress	Advancement Project
Applicant 2	LCCR	LCCR
Applicant 3	LCCR, member of state Democratic Party	LCCR
Applicant 4	LCCR, American Civil Liberties Union (ACLU)	ACLU
Applicant 5*	National Association for the Advancement of Colored People (NAACP)	NAACP
Applicant 6	ACLU	National Association of Latino Elected and Appointed Officials (NALEO); former Voting Section attorney
Applicant 7*	None	Former Voting Section attorney
Applicant 8	American Constitution Society (ACS), Brennan Center for Justice, ACLU, worked on campaigns for two Democratic candidates	Brennan Center for Justice
Applicant 9	ACS, ACLU	State Public Advocate's Office
Applicant 10	Campaign Legal Center, Common Cause	Campaign Legal Center
Applicant 11*	Advancement Project	Advancement Project
Applicant 12	Brennan Center for Justice, interned for Democratic member of Congress	Brennan Center for Justice
Applicant 13	Worked on or volunteered for campaigns for four Democratic candidates,	Solo practice (portfolio included election law cases)
Applicant 14*	Volunteered for campaign of Democratic candidate	Former Voting Section attorney
Applicant 15	ACS, Mexican American Legal Defense and Educational Fund	MALDEF, LCCR

	(MALDEF), Equal Justice Society, LCCR	
Applicant 16	LCCR	State Office of Legislative Counsel, Elections and Litigation Office
Applicant 17*	NAACP	NAACP
Applicant 18	LCCR, NAACP, ACLU	Solo practice (worked on voting rights case)
Applicant 19	Worked for state Democratic party	Solo practice (worked on two voting rights cases)
Applicant 20	Worked for campaign of Democratic candidate, Fair Elections Legal Network	Fair Elections Legal Network
Applicant 21*	MALDEF, Southern Coalition for Social Justice	Former Voting Section attorney
Applicant 22	Project Vote, worked for Democratic member of Congress	Project Vote
Applicant 23	People for the American Way, volunteered for campaigns of two Democratic candidates	People for the American Way
Applicant 24	ACS, Urban Justice Center, Brennan Center for Justice, Center for Reproductive Rights, worked on campaign for Democratic candidate	Brennan Center for Justice
Applicant 25	LCCR	LCCR
Applicant 26	Interned for Democratic state representative	State Board of Elections and Ethics
Applicant 27	Fair Elections Legal Network, Greenpeace	Fair Elections Legal Network
Applicant 28*	Equality Florida	Private law firm (drafted amicus brief on NVRA)
Applicant 29	MALDEF	MALDEF
Applicant 30	ACS, LCCR, member of college Democratic society	Private law firm (represented various civil rights advocacy groups in HAVA lawsuit against state)
Applicant 31	NAACP, worked on campaign for Democratic candidate, worked for Democratic member of Congress	Private law firm (pro bono work on election law issues)
Applicant 32	ACLU, interned for Democratic member of Congress	Private law firm (drafted brief in defense of citizens' right to vote)

Applicant 33	Interned for Democratic member of Congress	Private law firm (prepared amicus brief on constitutionality of VRA Section 5)
Applicant 34	Advancement Project	Private law firm (pro bono work contributing to amicus brief on the constitutionality of VRA Section 5)
Applicant 35	None	Asian American Justice Center
Applicant 36	None	State Board of Elections
Applicant 37	None	Private law firm (contributed to amicus brief on the constitutionality of VRA Section 5)
Applicant 38	None	State Attorney General's Office (litigation on ballot access and voters' rights cases)

* Applicant was hired.

Note: One of the nine applicants hired did not have prior voting litigation experience and therefore does not appear on this chart.

APPENDIX E

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
RANKING MEMBER—COMMERCE-JUSTICE-SCIENCE
TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 709-5800
(800) 945-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0990
(800) 850-3463 (IN STATE)

wolf.house.gov

Congress of the United States
House of Representatives

February 10, 2011

Ms. Cynthia Schnedar
Acting Inspector General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington DC 20530

Dear Ms. Schnedar:

I appreciate your testifying before my subcommittee yesterday to help the Congress identify waste, fraud and abuse at the Department of Justice. However, this morning I was made aware of the enclosed report detailing a disturbing type of "abuse" that was not raised during our hearing: the possible politicization of Freedom of Information Act (FOIA) requests within the department.

According to the enclosed information, a review of recent responses to FOIA requests by the department showed potential political and ideological factors may have influenced how quickly responses were provided. If accurate, this would reflect an abuse of the department's authority and, potentially, a violation of federal FOIA law.

As you will read in the enclosed document, the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), and National Public Radio (NPR) received immediate responses to FOIA requests while journalists from *The Washington Times, Human Events* and the group Judicial Watch waited five to six months for responses from the Justice Department. Other requests from conservative organizations were reportedly never responded to.

I have firsthand experience with the FOIA office at the Justice Department. In May 2009, I made a FOIA request to the department requesting information pertaining to the attorney general's efforts to secretly release a number of Guantanamo Bay detainees and re-settle them in northern Virginia. I made the FOIA request after the attorney general stonewalled my official requests for this information. However, the department, again, failed to provide the information that I requested after many months.

The enclosed information demonstrates a troubling inconsistency in the department's treatment of FOIA requests, potentially based on the requester's political or ideological position. All FOIA requests should be answered in accordance with the law. This inconsistency serves only to decrease public confidence in government and in direct conflict with President Obama's pledge for greater transparency.

I ask that you open an immediate investigation into this matter to determine whether the political or ideological position of the FOIA requester may have influenced the timing and nature of the department's responses. Additionally, I will be inserting this letter with my questions for the committee record relating to yesterday's hearing. I look forward to your prompt response.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

Bombshell: Justice Department Only Selectively Complies with Freedom of Information Act (PJM Exclusive)

According to documents PJM has obtained, FOIA requests from liberals or politically connected civil rights groups are often given same day turn-around by the DOJ. But requests from conservatives or Republicans face long delays, if fulfilled at all.

February 10, 2011 - by J. Christian Adams

Eric Holder's Justice Department has even politicized compliance with the Freedom of Information Act. According to documents I have obtained, FOIA requests from liberals or politically connected civil rights groups are often given same day turn-around by the DOJ. But requests from conservatives or Republicans face long delays, if they are fulfilled at all.

The documents show a pattern of politicized compliance within the DOJ's Civil Rights Division. In particular, I have obtained FOIA logs that demonstrate as of August 2010, the most transparent administration in history is anything but. The logs provide the index number of the information request, the date of the request, the requestor, and the date of compliance.

For example, Republican election attorney Chris Ashby of LeClair Ryan made a request for the records of five submissions made under Section 5 of the Voting Rights Act. Ashby waited nearly eight months for a response. Afterwards, Susan Somach of the "Georgia Coalition for the Peoples' Agenda," a group headed by Rev. Joseph Lowery, made requests for 23 of the same type of records. While Ashby waited many months for five records, Somach waited only 20 days for 23 records.

Under the Obama DOJ, FOIA requests from conservative media never obtained any response from the Civil Rights Division, while National Public Radio obtained a response in five days.

In 2006, Charlie Savage, then at the not-yet-insolvent *Boston Globe*, requested all of the resumes of the recently hired attorneys in the Bush Civil Rights Division — including mine. DOJ leadership was convinced rushing out the resumes of dozens of lawyers far before the deadline was a good thing.

Savage apparently has never made a similar request to the Obama Justice Department, even though the inspector general has opened an investigation into political payback and discrimination under Eric Holder. I wrote at PJM:

Savage could bolster his credibility by making the same inquiries of this Justice Department as he did to the Bush DOJ. For starters, he could examine the preposterous hiring practices in the Civil Rights Division since Obama's inauguration. The more time that passes without an inquiry from Savage and the *New York Times*, the more partisan his badgering of the Bush DOJ appears.

Yet Savage won the Pulitzer for attacks on the Bush administration.

In spring of 2010, Pajamas Media requested the exact same information from the DOJ that Charlie Savage requested in 2006 — except for hires made in the Obama DOJ. Recall the Bush administration turned over all the resumes of attorneys as fast as they could, and well before the statutory FOIA deadline.

PJM's request was ignored. Then on October 13, 2010, the request was renewed by certified mail. Still, no response as required by law.

So on January 18, 2011, the case of *Pajamas Media v. United States Department of Justice* was filed in the United States District Court in D.C. The most transparent administration in history? Hogwash.

Don't be fooled thinking that anyone was congratulating the DOJ's 2006 zeal in rocketing resumes to the *Boston Globe*. The Bush DOJ's eagerness to speed attorney resumes to the *Boston Globe* was rewarded with savage attacks. Republicans mistakenly bet that being champions of good government would earn them kudos. The only thing it earned was a kick in the teeth.

That's not to say that anyone should have violated the FOIA, as the Obama DOJ has done with PJM's request. But why would you grant favors to political opponents who plan to cut your throat? I suspect the current leadership of the DOJ takes that for granted. Notice they have not suffered a whiff of scrutiny until now.

The data in the FOIA logs I obtained reveal the priorities of the Civil Rights Division — transparency for friends, stonewalls for the unfriendly. Those enjoying speedy compliance with their Freedom of Information Act requests include:

– Gerry Hebert, noted free speech opponent, partisan liberal, and former career Voting Section lawyer who testified against now-Senator Jeff Sessions when he was nominated to the federal judiciary. Same day service.

– Kristen Clarke, NAACP Legal Defense Fund. Clarke sought the dismissal of the voter intimidation case against the New Black Panther party. Same day service.

– Ari Shapiro of National Public Radio. Five day service.

– Nicholas Espiritu of the Mexican American Legal Defense Fund. Next day service.

– Eugene Lee of the Asian Pacific American Legal Center. Three day service.

– Edward DuBose, president of Georgia NAACP. Same day service.

– Raul Arroyo-Mendoza of the Advancement Project. Same day service.

– Nina Perales of the Mexican American Legal Defense Fund. Two day service.

– Tova Wang of Demos. Three day service.

– Mark Posner and Robert Kengle of the Lawyers Committee for Civil Rights Under Law. Kengle is the same former DOJ attorney who did not want to do election coverage in Mississippi where a federal court found that white voters were being discriminated against. Same day service.

– Brian Sells, formerly of the ACLU and now of the DOJ Voting Section. (Paging Charlie Savage). One day service.

– Natalie Landreth, Native American Rights Fund. Same day service.

– Fred McBride, ACLU redistricting coordinator. Same day service.

– Jenigh Garrett, NAACP Legal Defense Fund. Same day service.

– Joaquin Avila, well-known election law professor in Seattle who advocates for the rights of illegal aliens to vote in American elections. Next day service.

In contrast, well-known conservatives, Republicans, or political opponents had to wait many months for a response, if they ever got one:

– Michael Rosman, Center for Individual Rights. Six month wait.

– Jennifer Rubin (seeking records relating to employees, like Charlie Savage did). No reply at all.

– Congressman Frank Wolf. Five month wait. Wolf now chairs the Appropriations Subcommittee in charge of the DOJ budget. Oops.

– Jed Babbin, editor at Human Events. Six month wait.

– Jerry Seper, *Washington Times*. Six month wait.

– Jim Boulet of the English First Foundation. No reply at all.

– Jenny Small of Judicial Watch. Five month wait.

– Republican Pennsylvania state Representative Stephen Barrar. Four month wait.

– Jason Torchinsky, former DOJ and now ace GOP lawyer. No reply at all.

– Ben Conery, *Washington Times*. Five month wait.

It should be noted that the logs reveal plenty of mundane compliance to requestors of no particular note. Other times, very short delays mark a request from an administration friend. But in no instance does a conservative or Republican requestor receive a reply in the time period

prescribed by law. The logs demonstrate an unmistakable pattern — friends zoom in the express lane, while foes are stuck waiting on the shoulder.

Politicized compliance with FOIA might be an administration-wide pattern. The revelation that the Obama Department of Homeland Security has politicized the FOIA process may be just the tip of the iceberg.

If so, what should we make of patterns of lawless noncompliance with the FOIA? If nothing else, it exposes the rank hypocrisy of those heady days in 2008 when transparency was a campaign promise. In the worst case, we have an administration willing to violate the law to conceal details about their governance.

Even this should outrage members of the mainstream media — unless of course they already zoom along in the DOJ information fast lane.

WITNESSES

INDEX

Department of Justice

Attorney General Eric Holder

Page

Department of Justice Office of Inspector General

Inspector General Michael E. Horowitz

Federal Bureau of Investigation

Director Robert S. Mueller, III

Drug Enforcement Administration

Administrator Michele M. Leonhart

Bureau of Prisons

Director Charles E. Samuels, Jr.

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